Equal Employment Opportunity
Construction Contract Compliance Workbook

January 2014

EEO-DBE-OJT-WAGES

Summary of Workbook Changes

Chapter 1	General Information
Chapter 2	Disadvantaged Business Enterprises
Chapter 3	Company EEO/AA Requirements
Chapter 4	Project EEO/AA Requirements
Chapter 5	On The Job Training
Chapter 6	Wages and Payrolls
Chapter 7	Index of Forms and Documents

This edition supersedes & replaces in its entirety all previous editions.

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Section 1.1

OVERVIEW

1.1.1 Background

The Florida Department of Transportation (FDOT), a recipient of funds for the construction of highways and bridges, is required to ensure EEO contract compliance on all highway construction projects. Contractors who participate on FDOT contracts are required to comply with certain Equal Employment Opportunity (EEO), Disadvantaged Business Enterprises (DBE), On-the-Job Training (OJT) and Wage Rate Special Provisions to be eligible for participation. An extensive review of the program began in the year 2000 to improve the program's efficiency, effectiveness and provide clear guidance to all stakeholders. This workbook is designed to assist contractors in complying with the required specifications.

1.1.2 Scope

Contractors of highway and bridge construction contracts are subject to EEO Construction Contract Compliance. The main elements of the compliance program are:

- Disadvantaged Business Enterprise (DBE) Utilization
- Equal Employment Opportunity and Affirmative Action (EEO/AA)
- On-the-Job Training (OJT)
- Wages and Payrolls.

Specific contract characteristics such as funding, contract days, contract dollars, subcontract amount, etc. determine which program elements apply to which contracts.

1.1.3 Authority

23 CFR 230 prescribes the policies, procedures, and guidance for equal opportunity on federal construction contracts.

23 CFR 230.111 prescribes State agency requirements for an On-the-Job Training program for all Federal Aid Highway construction contracts. Other regulations governing State compliance programs include: Title VI of the Civil Rights Act of 1964, Federal Aid Required Contract Provisions (known as FHWA 1273), and the Davis Bacon Act, the Copeland Act and the Contract Work Hours and Safety Standards Act.

FDOT Standard Specifications for Road and Bridge Construction, Section 9, **Measurement and Payment, FHWA 1273, 23 CFR Part 230 and 49 CFR Part 26** authorize FDOT to take sanctions for the condition and state of noncompliance.

1.1.4 Government Agency Responsibilities

Multiple government agencies have responsibilities for an interest in the various elements of the construction contract compliance program.

The Federal Highway Administration (FHWA) approves the FDOT's compliance program, reviews overall compliance activity through specified periodic reports, and reviews individual contracts and / or contractors as deemed appropriate. The U.S. Equal Employment Opportunity

Commission (EEOC) investigates charges of discrimination or harassment filed by project workers.

1.1.5 FDOT Responsibilities

Under the FDOT's Office of Administration, the Equal Opportunity Office (EOO) is responsible for the development and monitoring of policies and procedures that provide assurances to the Federal Highway Administration.

Under each District Construction Office, District Contract Compliance Managers (DCCMs) are responsible for the day-to-day administration of the contract compliance program. Resident Compliance Specialists (RCS) monitor contract compliance at the project level.

FDOT's State Construction Office is responsible for the administration of the Davis Bacon Act requirements relating to wage rates. The State Construction Office Prevailing Wage Rate Coordinator establishes policies and procedures pertaining to that requirement; districts are responsible for the day-to-day project administration of wages.

1.1.6 Nondiscrimination Assurance Required of Primes, Subcontractors, Rental Companies and Material Suppliers

As a recipient of federal funds, each contract FDOT executes with a prime contractor (and each subcontract the prime contractor signs with a subcontractor), must include the exact wording of the nondiscrimination assurance shown in Attachment 1.1.6

Attachment 1.1.6
Nondiscrimination Assurance
Required in Each Contract & Subcontract
(49 CFR 26.13)

"The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

1.1.7 Contract Documents and the EEO Construction Contract Compliance Workbook

Each executed FDOT construction contract contains multiple specifications and those vary depending on many factors including the contract's federal funding or nonfederal funding. Many specifications pertain specifically to the Construction Contract Compliance program and outline the contractor's general compliance requirements for that contract.

This EEO Construction Contract Compliance Workbook describes FDOT's approved program for contractor compliance reporting and monitoring to achieve a Consistent, Predictable, and Repeatable (CPR) compliance program. It provides a detailed explanation of the general compliance requirements, forms, record keeping, and analytical tools for reporting and monitoring compliance on Florida's construction and design build contracts.

The workbook reflects the compliance monitoring program approved by the Federal Highway Administration ('FHWA') for FDOT. Any deviation from the policy outlined in the EEO Contract Compliance Workbook requires prior approval from the State Construction Office and the Equal Opportunity Office.

Chapters One through Six (1-6) of the Construction Contract Compliance Workbook describe the compliance program requirements. The workbook includes instructions for completing compliance program forms and identifies other documents used in the program (e.g. posters). The last section of each chapter includes an index of forms and documents pertinent to that chapter and a copy of that data. Chapter Seven (7) is an index of all forms and documents.

Contract Specifications are regularly revised for incorporation in newly executed contracts and this Workbook is periodically updated to support those and other changes. Table 1.1.71 summarizes the contract compliance specifications

Table 1.1.7.1
Compliance Related Specifications Included in FDOT Construction and Design Build contracts

Specification	Included If federally funded	Included if Non-FAP/State funded
7-1.1 Laws to Be Observed	Yes	Yes
7-1.1.1 Compliance with American Recovery & Reinvestment Act of 2009	Yes if ARRA contracts; otherwise No	No
7-16 Wage Rates for Federal Aid projects	Yes	No
7-28 E-Verify	Yes	Yes
7-24 DBE Program (including Nondiscrimination Assurance)	Yes	Yes
7-25 OJT Requirements	Yes	Yes (applies only in the event the contractor initiates voluntary OJT)
7-26 Equal Employment Opportunity Requirements	No	Yes
FHWA 1273 Required Contract Provisions Federal Aid construction	Yes	No
9-5.3.2 Payment-withholding payment	Yes	Yes

1.1.8 E-Verify

FDOT requires utilization of the U.S. Department of Homeland Security's E-Verify system to confirm the employment eligibility of all persons who perform employment duties or work pursuant to any FDOT contract within Florida. This requirement extends

to all agreements entered into under an FDOT contract and all parties are advised to maintain records evidencing compliance with E-Verify

1.1.9 FHWA 1273 Required Contract Provisions Federal aid Construction

FHWA 1273 is a comprehensive summary of laws and regulations pertaining only to federally funded construction contracts throughout the nation. The Workbook reflects Florida's specific compliance expectations regarding FHWA 1273.

There are currently two unique versions of FHWA 1273 and letting date of the contract directs which version is applied; refer to Table 1.1.9.1. The compliance obligations contained in these versions vary and they are summarized in Table 1.1.9.2.

Table 1.1.9.1 Which version of FHWA 1273 Applies

Contract letting date	FHWA 1273 version dated
Prior to and including Aug. 9, 2012	March 10, 1994
Aug 10, 2012 and thereafter	May 1, 2012

Table 1.1.9.2 summarizes Contract Compliance changes associated with the two FHWA 1273 versions. The version of FHWA 1273 contained in the prime's contract with FHWA determines whch version applies. Table 1.1.9.3 compares the provisions of the two versions.

Table 1.1.9.2
Contract Compliance Changes: FHWA 1273 March 10, 1994 vs May 1, 2012

What is required in Subordinate Agreements:	**Prime's contract includes**	
	March 10, 1994 FHWA 1273	**May 1, 2012 FHWA 1273**
Subcontracts and lower tier subcontracts	Include FHWA 1273 in its entirety	Include FHWA 1273 in its entirety
Purchase Orders	Include FHWA 1273, in its entirety	Include a reference to FHWA 1273
Rental Agreements		
Material supply contracts		
Engineering or architectural contracts		
Design services		
Other agreements for supplies & services		
Emergency contracts solely intended for debris removal		
Certifications:	Prime retains certification from prime, subs & material suppliers ($10,000+)	Certification not specified
Certification of Non Segregated Facilities (form 274-030-13)		
Certification of Compliance with EEO Provisions on Federal Aid Contracts (form 700-011-13)	Submission of form required	Certification not specified
Poster on Job Site Bulletin Board:		
"Important" Poster	Required on Job Site Bulletin boards	Discontinued; no longer required
Employee Rights; Davis Bacon	n-a	Required

Table 1.1.9.3 Summary & Comparison of FHWA 1273 Provisions-continued

FHWA 1273, Section II- Nondiscrimination		
Topic	**FHWA 1273- Mar. 10, 1994**	**FHWA 1273 May 1, 2012**
Applicability of FHWA 1273 in Material Supply Contracts	FHWA 1273 was required in material supply contracts.	Title 23 CFR 230.107(a) excludes material supply contract from requiring insertion of FHWA 1273. Additional text was added to clarify that the requirements of Part 230 (EEO on Federal & Federal Aid construction Contracts) apply to construction contracts and not material supply, engineering, or architectural service contracts.
Executive Order 11246,USDOL, Equal Opportunity	Executive 11246, Equal Employment Opportunity was not addressed	Clarification of USDOL's exclusive compliance authority for 11246 per FHWA Order 4710.8 dated February 1, 1999
29 CFR 1625-Age Discrimination in Employment	This version addressed age discrimination in employment.	Additional regulatory requirements were incorporated including 49 CFR 27 (Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefits from Federal Financial Assistance).
Federally Assisted contracts, Equal Opportunity Clause (41 CFR 60-1.4(b))	Included provisions on Section II- Nondiscrimination.	Additional regulatory references on the applicability of the Federally Assisted Contracts Equal Opportunity Clause (41 CFR 60-1.4(b) and Construction Contractors Affirmative Action Requirements (41 CFR 60-4.3).
Terminology change: Contracting agency versus State Highway Agency	State Highway Agency was used throughout the document.	"Contracting Agency" replaces 'State Highway Agency'
Terminology change: Minorities and Women versus Minority Groups	Minority groups were used throughout the document.	"Minorities and women" replaces "minority groups".
Bargaining Agreement: Recruitment	Section II.4 (b) discriminatory hiring hall practices cited as violation of 11246.	Bargaining agreements providing for exclusive hiring hall referrals which have the effect of discrimination against minorities or women violates federal nondiscrimination provisions
Apprentices or Trainees	Where feasible, 25% of trainees and apprentices shall be in their first year of training	The 25% first year provision was deleted. Agencies may reserve training positions for welfare recipients
Nondiscrimination Provisions	Section 11.7 cites authority of DOL for contractor to comply with nondiscrimination provisions.	The reference to DOL was removed; however the provision requiring the contractor to comply with nondiscrimination is intact.
Accommodations for Disabled Persons	~~A~~ddressed Non discriminating on the basis of race, color, religion, sex, or disability.	Reasonable accommodation for individuals with disabilities added.
49 CFR 26 Participation by DBE's	Did not directly address 49 CFR 26.	New Section II.10 citing this CFR and requiring the contractor to carry out the requirements contained therein
Certification for non segregated facilities	Required certification of non segregation by contractor, subcontractors, material supplier or vendors.	Certification requirement removed but responsibility for ensuring non segregated facilities remains.
Section III- Nonsegregated Facilities		
Required certification of non segregated facilities.	Paragraphs have been combined into one paragraph and certification of non segregated facilities has been removed.	

Table 1.1.9.3 Summary & Comparison of FHWA 1273 Provisions-continued

Section IV- Davis-Bacon and Related Act Provisions		
Topic	**FHWA 1273- Mar. 10, 1994**	**FHWA 1273 May 1, 2012**
Terminology change- Davis-Bacon vs. Minimum Wage	Titled "Payment of Predetermined Minimum Wage"	Davis Bacon and Related Act Contract Provisions including 29 CFR 5.5(a) (1) through (10) (Contract provisions, Enforcement, Reports, Liquidated Damages, Suspension, Restitution)
Job Site bulletin board	Required posting of ""Important Wage Rate Information Poster" (FHWA form 1495)	"Important" poster replaced with "Employee Rights Under the Davis Bacon Act" poster.
Section V- Contract Work Hours and Safety Standards		
Terminology change- Contract Work Hours and Safety Standards vs. Statements and Payrolls	Titled ""Statements and Payrolls"	Re-titled to "Contract Work Hours and Safety Standards Act Provisions".
Section VI- Subletting or Assigning the Contract		
Contractor's statement of Materials and Labor	Required completion of Form FHWA-47 (Statement of Materials and Labor used by contractors On Highway Construction involving Federal Funds)	Submission of form removed; requirements for subletting or assigning the contract described.
Section VII- Accident Prevention		
Accident Prevention	Scope not specified	States the section applies to all Federal Aid construction contracts and related subcontracts
Section VIII- False Statements Concerning Highway Projects		
False Statements	Scope not specified	States the section applies to all Federal Aid construction contracts and related subcontracts
Section IX- Implementation of Clean Air Act and Federal Water Pollution		
Implementation of Clean Water Act and Clean Air Act	Contained in Section X	Contained in Section IX References cited for Federal Clean Water and the Clean Air Act as recommended by the EPA.
Section X- Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion		
Provision applies to whom	Not specified	All Federal aid construction contracts, design-build, subcontracts, lower tier subcontracts, purchase orders, lease agreements, consultant contracts or other transactions.
Terminology Change Attachment A title	Titled 'Employment Preference to Appalachian Contracts'	Re-titled as Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts.

1.1.10 Audit of Subordinate Agreements

Within ninety (90) days of the execution of a federal aid construction contract execution, the contract's resident compliance specialist ('RCS") will issue to the prime a memorandum ('Subject: Audit of Subordinate Agreements for FHWA 1273') requesting complete copies of selected subcontracts and purchase orders for the purpose of verifying proper inclusion and/or reference to FHWA 1273. For Design Build contracts, this initial request will be made within ninety days of the begin construction date. Regardless of execution date, all federal aid construction and design build contracts are subject to this audit including those past their initial ninety days.

The requirement to include FHWA 1273 'in it's entirety' is fulfilled by physically incorporating (not referencing) the full and complete document at any place in the agreement. It may not be shorted nor abbreviated. The Required Contract Provisions shall not be incorporated by reference in any case. FHWA 1273 is available as a PDF file on the FHWA website or it may be used in another file format provided the text is verbatim and complete.

The requirement to reference FHWA 1273 is fulfilled by including verbiage such as the following at any place in the agreement:

> "The contractor is advised of their obligation to to comply with the requirements of FHWA 1273, Required contract Provisions, Federal-Aid Construction Contracts".

Table 1.1.9.3 describes what (full inclusion or reference) will be audited based on the version of FHWA 1273 included in the prime's contract. At least 20% of all such agreements will be audited and the RCS may issue more than one such memorandum during the term of the contract to ensure that the Table 1.1.10.1 thresholds are met. Table 1.1.10.1 identifies the minimum agreements to audit.

The contractor may submit the requested data electronically or by hard copy. Proprietary data may be redacted provided there is no impact on the ability to determine compliance for the specific contract.

In the event FHWA 1273 is not appropriately reflected in the collected document(s) the Non Compliance Communications described in Workbook Section 1.6 will be initiated in the timeframes so specified and requests to review additional agreements will be issued.

The prime may resolve this noncompliance by providing the RCS a full and complete copy of an executed agreement(s) reflecting the necessary correction(s).

Table 1.1.10.1
Minimum FHWA 1273 Verification Audits

# subcontracts & purchase orders	20% Initial audit		# subcontracts & purchase orders	20% Initial audit
5	1		55	11
10	2		60	12
15	3		65	13
20	4		70	14
25	5		75	15
30	6		80	16
35	7		85	17
40	8		90	18
45	9		95	19
50	10		100	20

1.1.11 Prime Contractor Responsibilities

The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor.

All Contractors are to implement and maintain, throughout the course of a contract, actions which comply with their contractual obligations. Records evidencing each aspect of required compliance are to be developed and maintained by all contractors for a period of three years following completion of the contract regardless if such records are or are not routinely collected by the Department during the contract.

Through September 2012, Department contract specifications required the prime contractor of a federal construction or federal design build contract to establish a process for routine and complete monitoring of their contractors' compliance with FHWA 1273 Section II Nondiscrimination and Section III Nonsegregated facilities and a monthly certification was required (FDOT Form 700-011-13, "Certification of Compliance with Equal Opportunity (EEO) Provisions, Federal Aid Construction". The monthly certification reporting requirement is discontinued effective with contracts let September 2012 and after. Contracts let previously, continue to require monthly certification submission.

1.1.12 Prime Contractor Compliance Process

Regardless if a prime is or is not required to submit a monthly compliance certification to FDOT; the prime is responsible for compliance on the contract. Implementation of the prime's compliance responsibility requires development of a process for reviewing and confirming their contractors' compliance with all aspects of EEO, DBE, OJT and wages.

A prime's process may entail any one of a multitude of approaches including, but not limited to; requiring documentation submissions, collection of subcontractor certifications, verification of data, etc. Relying solely on a subcontractor's affirmation of compliance may not be adequate.

The prime's compliance process should include a series of actions and sanctions aimed at overcoming subcontractor noncompliance and timeframes for taking such action. Noncompliance communications may include a series of verbal and written notices; sanctions may include the holding of subcontractor progress payments, contract termination and/or denial of subsequent subcontracts.

The prime contractor, at the time of executing subcontracts, should discuss/review their certification of the compliance process. The prime's process should include communications to the subcontractor regarding record keeping, record submission, and timeframe requirements and a definition of how and when incidents of subcontractor noncompliance will be addressed by the prime. The Department is available to assist contractors in the development of their compliance process.

Prime contractors are encouraged to remain cognizant that subcontractors work for a variety of primes and, accordingly, may be subjected to multiple individual compliance processes. The collection of document copies versus originals should be allowed; Primes can always ask a subcontractor for additional data if compliance appears questionable based on such documents.

When a prime has a recurring contractual relationship with a subcontractor, the prime may wish to establish subcontractor compliance files in order to reduce duplication of subcontractor submissions.

1.1.13 Prime Contractor Compliance Records and Department Review

Prime contractors are to ensure that records are developed, collected and maintained to attest compliance with requirements for a period of three (3) years following completion of the contract

work. These records are to be made available at reasonable times and places of inspection by FDOT and FHWA representatives.

1.1.14 Default of the Prime Contractor

In the event a prime contractor defaults on a contract and their contract compliance data is incomplete or incorrect, the Resident Compliance Specialist will proceed with all noncompliance communications and actions such that the surety company and/or the successor contractor are fully aware of the conditions. A surety company is exempt from contract compliance reporting requirements but is responsible for ensuring that the successor contractor carries out the requirements.

1.1.15 Compliance Training and Technical Assistance

The District Contract Compliance Managers and the Equal Opportunity Office provide training to contractor personnel as well as compliance staff regarding the requirements of the FDOT Construction Compliance Program.

1.1.16 Disclaimer

The information in this Construction Contract Compliance Workbook was compiled by the FDOT with the cooperation of the construction industry, and others. This information is intended to be used exclusively on Florida Road and Bridge Construction projects.

For issues of personnel, payroll or contract administration not related to contract compliance, contractors are directed to consult with legal counsel of their choice regarding such matters.

Section 1.2

DEFINITIONS

1.2.1 Scope

This section is intended as an initial reference for understanding contract compliance laws, regulations, and terminology. Statements are deliberately brief. Although pertinent to the Construction Contract Compliance Program, the full scope of laws and secondary definitions are excluded from this section

1.2.2 Laws & Regulations

23 CFR 140: Prescribes the policies, procedures, and guidance to develop, conduct, and administer supportive services assistance programs for minority, disadvantaged, and women business enterprises.

28 CFR 35: Prohibits discrimination on the basis of disability by public entities.

29 CFR 1630: Regulates implementation of the Equal Employment provisions of ADA

29 CFR, Part 3 (Copeland "Anti-Kickback" Law) Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts in excess of $2,000 shall comply with the provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which (s) he is otherwise entitled.

40 USC 3141-4147 (Davis-Bacon Act of 1931 and as amended) Under the provisions of this Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine such local prevailing wage rates which can be found in a document titled "General Decision Number".

41 CFR 60: The purpose of the regulations in this part is to achieve the aims of Parts II, III, and IV of Executive Order 11246 for the promotion and insuring of equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with government contractors or with contractors performing under federally assisted construction contracts.

41 CFR 60.1: Clarifies the existing requirement that a nonexempt construction contractor's total construction workforce is covered under 41CFR 60 even though some employees may perform work on nonfederal assisted contracts.

40 USC Chapter 37, Sections 3701-3708 (Contract Work Hours and Safety Standards Act): Where applicable, all contracts awarded in excess of $2,000 for construction contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Subparts 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Subsection 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Subpart 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous or dangerous.

42 USC 12101: Regulates Equal Opportunity for individuals with disabilities**.**

49 CFR 23 and 26: Regulates participation by Disadvantaged Business Enterprises in Department of Transportation programs**.**

American Recovery and Reinvestment Act (ARRA): This is an economic stimulus package enacted by the United States Congress in February 2009 and it is intended to provide a stimulus to the U.S. economy in the wake of the economic downturn. Provisions for domestic infrastructure spending provided FDOT additional road and bridge construction monies.

Equal Pay Act of 1963: A law which requires equal pay between the sexes on jobs that require equal skill, effort, and responsibility**.**

Equal Pay Act of 1976 (EPA): This legislation prohibits discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce.

Executive Order 11246: This legislation bans discrimination and requires contractors and subcontractors to take affirmative action to ensure that all individuals have an equal opportunity for employment, without regard to race, color, religion, sex, national origin, disability or status as a Vietnam era or special disabled veteran.

Rehabilitation Act of 1973: Prohibits job discrimination because of disabilities and requires affirmative action to employ and advance in employment qualified individuals with disabilities who with reasonable accommodation can perform the essentials of a job.

Title I of the Americans with Disabilities Act (ADA) of 1990: Prohibits employment discrimination against qualified individuals with disabilities.

Title VI of the Civil Rights Act Of 1964: Prohibits discrimination on the basis of race, color, or national origin in all programs or activities receiving federal funding.

Title VII of the Civil Rights Act of 1964 (and as amended): Prohibits employment discrimination based on race, color, religion, sex and national origin

Title VIII of the Civil Rights Act of 1964 (**and as amended)**: The portion of the Civil Rights Act of 1968 (also known as the Fair Housing Act), as amended by the Housing and Community Development Act of 1974 and the Fair Housing Amendments Act of 1988, which prohibits discrimination in the sale, lease, rental, advertising, financing, and brokerage services of housing and real property based on race, color, religion, sex, national origin, disability, or familial status.

Vietnam Era Veterans Readjustment Assistance Act of 1972, (38 USC 4212) Prohibits discrimination and requires affirmative action to employ and advance in employment qualified Vietnam era veterans and qualified disabled veterans.

1.2.3 Glossary

Adverse Impact: The selection of protected-class members at a rate lower than that of other groups. A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5 or 80%) of the rate for the group with the highest rate will generally be regarded by the enforcement agencies as evidence of adverse impact.

Affected Class: A group of individuals who have been denied equal employment opportunities or benefits, as a result of discriminatory practices or policies. Evidence of the existence of an affected class requires identification of the discriminatory practices, identification of the effects of the discrimination, and identification of those suffering from the effects of the discrimination.

Affirmative Action: Specific actions in recruitment, hiring, upgrading, and other areas designed and taken for the purpose of eliminating the present effects of past discrimination, or to prevent discrimination. Affirmative action achieves, maintains or leads to equal employment opportunity**.**

Affirmative Action Program (AAP): A written positive management tool of a total equal opportunity program indicating the action steps for all organizational levels of a contractor to initiate and measure equal opportunity program progress and effectiveness.

Affirmative Recruitment: Special targeted and focused recruitment efforts undertaken to assure that qualified minorities and females are well represented in the applicant pool for positions to be filled.

Age Discrimination In Employment Act of 1967 (ADEA): Protects individuals forty years of age or older except where age is a bona fide occupational qualification or where the person is a key executive or policy-maker and meets other criteria**.**

Agency for Workforce Innovation (AWI): A Florida State agency that administers a wide variety of labor services including statewide operation of One Stop Centers where employers can electronically post job openings for review by the public. See also ‘One Stop Centers”.

American Indian or Alaskan Native(not Hispanic or Latino): A person having origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment.

Applicant: A person who is seeking work and conforms to the employer’s policy definition of an “applicant”. An employer’s definition of applicant, for example, may be limited to include only those who submit a completed company employment application.

Applicant Log: A record of applicants for employment detailing each applicant's name, date of application, referral source, and position applied for, race, and sex. The status of the applicant is also recorded.

Applicant Flow: The number of applicants for employment for a given job over a stated period of time.

Applicant Pool: The collection of candidates from which an employer selects persons to fill available positions.

Apprentice: A person employed and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with the State Apprenticeship Agency, recognized by the Bureau, or a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

Asian (not Hispanic or Latino): A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent including, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

Banking: Trainees completed in excess of contract requirements in which the contractor wishes to hold in reserve for utilization and credit on another project. Training may occur on state funded projects for banking purposes**.**

Banking Certificate of Training: Certificate issued as verification that the contractor has banked credit for completion of training in excess of contract requirements**.**

Department: The State Highway Agency (Florida Department of Transportation) charged by its laws with the responsibility for highway construction. The term "State" is considered equivalent to State Highway Agency**.**

Black or African American (not Hispanic or Latino): Persons having origins in any of the Black racial groups of Africa.

Bona Fide Occupational Qualification (BFOQ): A qualification established by the employer that is required in order to be able to perform the duties of a particular job**.**

Calendar Day: Every day shown on the calendar, ending and beginning at midnight.

Certification: The contractor's sworn statement that the company has complied with the Equal Opportunity Special Provisions Requirements for Federal Aid Construction Projects.

Certificate of Training: Certificate issued as verification of the trainee's successful completion of the training requirements for the classification in which training occurred. This is also known as a graduation certificate**.**

Civil Rights Act of 1964: The nation's first comprehensive law making it illegal to discriminate on the basis of race, color, religion, sex, and national origin. Title VII of that law, which is enforced by the Equal Employment Opportunity Commission, is specifically aimed at preventing discrimination in employment.

Classification: A craft in which a trainee receives On-the Job training, whether through an apprenticeship program or other programs approved or accepted by the FHWA.

Clerical: A job category on the FDOT EEO Report, which includes personnel performing all clerical/administrative type work regardless of level of difficulty, and regardless of where the activities are performed (field site or office). Job classifications typically included are bookkeepers, typists, clerks, accounts receivables/ payables, etc.

Collective Bargaining Agreement: A written contract between an employer and a labor union, for a definitive period of time, spelling out conditions of employment, wages, hours of work, rights of employees, rights of the union, and procedures to be followed in settling disputes.

Commercially Useful Function (CUF): A determination of CUF is made in regards to proper reporting of work for Disadvantaged Business Enterprise (DBE) utilization purposes. A DBE performs a CUF when it is (1) responsible for execution of the work of the contract (2) carries out its responsibilities by actually performing, managing, and supervising the work involved (3) is responsible, with respect to materials and supplies used on the contract, for negotiating price directly with the supplier, determining quality and quantity, ordering material, and installing (where applicable) and paying for the material itself.

Complainant: The person(s) who files a complaint.

Complaint: A formal (written) employment discrimination charge filed in accordance with the company policy or Equal Employment Opportunity Commission (EEOC) guidelines or Florida Commission on Human Relations (FCHR) guidelines, which allege a violation of state and/or civil rights laws.

Compliance: A contractor's status when fully meeting the requirements and obligations imposed by the contract provisions and the state highway department pertaining to Equal Employment Opportunity, Disadvantaged Business Enterprise, On-the-Job Training, Wages and Payrolls and their implementing laws and regulations.

Concentration: Preponderance of persons by race, sex and/or race and sex combination.

Contract: A legally binding agreement between the parties (FDOT and the prime contractor).

Contract Time: The number of calendar days allowed for completion of the contract work, including authorized time extensions**.**

Contractor: The individual, firm, joint venture, or company contracting with the Department to perform the work.

A) Prime Contractor: A company having a contract with the FDOT.
B) Subcontractor: A company having a contract with a prime contractor or subcontractor regardless of tier.
C) Tier: indicates that a company is subordinate to another company on the contract. A subcontractor is first tier to the prime. A company that subcontractor engages is "2nd tier", and if they in turn engage another company, that company is "3rd Tier".

Corrective Action Plan: A contractor's unequivocal written and signed commitment outlining actions taken or proposed, with time limits and goals, where appropriate to correct, compensate for, and remedy each violation of the equal opportunity requirements as specified in a list of deficiencies. (This is sometimes called a conciliation agreement or a letter of commitment).

Craft Workers: Hourly paid workers exercising independent judgment and performing jobs of relatively high skill level based on extensive training. This includes all those in the construction trades, as well as hourly paid supervisors and lead operators. The EEO Categories included in craft workers are Equipment Operators, Mechanics, Truck Drivers, Ironworkers, Carpenters, Cement Masons, Electricians, Pipe Fitters, Pipe Layers, Painters, and Semi Skilled Laborers.

Culture: The customs, skills, arts, language, and other related behaviors of a people that set them apart as a distinct group or society.

Day Labor Agencies: A staffing agency which employs and places workers in day-to- day jobs at client sites.

Disadvantaged Business Enterprise (DBE): A for-profit small business concern (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals and (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Discrimination: A distinction in treatment based on race, color, religion sex, national origin or disability.

Deficiency: A shortfall, insufficiency, lack or void regarding the equal opportunity requirements of the contract and/or the FDOT Construction Compliance Program.

Disparity: Inadequate representation of minorities and / or women in a workforce or applicant pool.

Diversity: The employment of women and minorities in each job category and in classifications typical of the workforce.

DUNS Number: The Data Universal Numbering System (DUNS) used to keep track of how federal grant money is dispensed. The DUNS number is also used in ARRA project reporting.

Economically Disadvantaged: Individual participating in the Department's On-the-Job Training program determined to be below or at poverty level as determined by the following; (1) Certification from the Florida State Employment Service and/or Joint Training Partnership Act Program or (2) Prior year unemployment verification using a W-2 or other income tax data reflecting the person's economic status (or) AFDC (Aid for Families with Dependent Children) Recipient Verification (or) Other public services established to enhance family economics verification.

Electronic Payrolls: Certified payrolls submitted by electronic mail (email, facsimile, ftp sites, diskettes or USB drives) or any method of submittal that is not by hard copy, hand delivered, and U.S. mail.

Employment Discrimination: Any action associated with employment, which denies equal treatment or opportunity to an individual, or group of individuals, as compared to others similarly situated, based on race, color, disability, sex or other protections.

Employment Practice: Recruitment, hiring, and selection practices, transfer or promotion policies, and other provisions or functions associated with the employer's employment or

selection process, which contributes, intentionally or not to the analysis, screening hiring and/or upgrading of employees.

Equal Employment Opportunity (EEO): The absence of partiality or distinction in employment treatment so that the right of all persons to work and advance on the basis of merit, ability, and potential is maintained.

Equal Employment Opportunity Commission (EEOC): An independent commission created by the Civil Rights Acts of 1964, as amended, which is responsible for enforcing Title VII. The EEOC may bring suit, subpoena witnesses, issue guidelines which have the force of law, render decisions, and provide technical assistance to employers and legal assistance to Complainants.

Equal Employment Opportunity Officer (EEO Officer): The person appointed the responsibility for effectively administering and promoting a company's active Equal Employment Opportunity Program and ensuring that the company's policy, plan and program are being carried out

Ethnic Group: A group identified on the basis of religion, color, or national origin.

FDOT: The Florida Department of Transportation also abbreviated as DOT.

Employer Identification Number or FEID Number: This is a nine-digit number the Internal Revenue Service assigns to legal entities (e.g. a corporation, partnership, or sole proprietorship). This number is used by that entity to identify itself in reporting to the IRS, the Social Security Administration and to the FDOT EOC System.

Federally or Federally Assisted Construction Contract: Any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the government or borrowed on the credit of the government pursuant to any program involving a grant, contract, loan, insurance or guarantee under which the applicant itself participates in the construction work.

FHWA: The Federal Highway Administration is a division of the U.S. Department of Transportation and is responsible for setting policies, writing procedures, and providing oversight, guidance and direction to State Departments of Transportation receiving funds.

Florida Commission on Human Relations (FCHR): The state commission responsible for investigating employment discrimination charges filed in accordance with Chapter 760, F. S.

Foremen/Forewomen: A job category on the FDOT EEO Report which includes salaried or hourly paid employees primarily responsible for the work of craft and/or laborer personnel on construction projects.

Good-Faith Efforts: Affirmative action measures designed to implement the established objectives of an affirmative action plan.

Graduation: Action requested by the prime contractor when a trainee completes all training requirements. Graduation is based upon satisfactory completion of proficiency demonstrations set up as milestones in each specific training classification, completion of the minimum hours in a training classification range and the employer's satisfaction that the trainee does meet journeyman status in the classification of training.

Handicapped or Disabled Individual(s): Any person who: (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (b) has a record of such an impairment; or (c) is regarded as having such an impairment. Persons with certain drug and/or alcohol abuse situations are excluded from this definition.

Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin regardless of race.

Inspector: An authorized representative of the engineer, assigned to make official inspections of the materials furnished and of the work performed by the contractor**.**

Job Category (or EEO Job Category): Broad categories to which individual job classifications are assigned for reporting purposes.

Journeyman/Journeywoman: One who is able to perform all of the tasks of their trade or occupation. This includes those who have graduated from formal apprenticeship or formal On-the-Job training programs such as the FDOT/FTBA program.

Lack of Diversity: Homogeneous grouping void of persons reflective of the available workforce.

Local Agency: A unit of government with less than statewide jurisdiction or any officially designated public agency or authority of such a unit of government that has responsibility for planning, construction, operation or maintenance of, or jurisdiction over a transportation facility. The term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization (MPO), an expressway or transportation authority, a road and bridge district, a special road and bridge district, or a regional governmental unit.

Local Agency Program: FDOT has legislative authority to contract with Florida's Local Agencies to plan, develop, design, acquire right-of-way, and construct transportation facilities. FDOT reimburses these local agencies for services provided to the public. The formal name given to this program is the Local Agency Program (LAP). Authority for LAP is provided in Sections 20.23(3) (a), 334.044(7), 339.05, and 339.12 of the Florida Statutes.

Minority (or Minorities): Persons of Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native races. The term may mean these groups in the aggregate or an individual group.

National Origin: Pertains to one's origin based on birthplace, ancestry, culture or linguistic characteristics common to a specific ethnic group. National origin may be expressed as a country (e.g. Nigeria, China, Jamaica or as a continent or geographical area (e.g. African, Asian, Caribbean).

NAICS Code (pronounced 'nakes') North American Industry Classification System (NAICS) A five to six digit numerical coding system classifying businesses by industry, (not product).

Native Hawaiian or Other Pacific Islander (not Hispanic or Latino): Persons having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Noncompliance (or Violation): Failure to (a) conform to compliance related requirements of the contract and/or (b) failure to meet the requirements of the FDOT Compliance program in the time period(s) required; and/or (c) timely submittals, which, upon review, evidence a lack of

conformity with program requirements. Noncompliance pertains to EEO, DBE, OJT and payrolls/wages.

Office of Federal Contract Compliance Programs (OFCCP): OFCCP has the responsibility of assuring that employers doing business with the Government comply with the equal employment opportunity (EEO) and affirmative action provisions of their contracts. OFCCP is part of the U.S. Department of Labor's Employment Standards Administration.

Officials (Managers): A job category on the FDOT EEO Report which includes personnel who set broad polices, exercise overall responsibility for the execution of these policies and direct individual departments or sections of a business' operations. Typically includes, but may not be limited to officers of the company, executives, middle managers, department managers, etc.

One Stop Center: A unit within Florida's Agency for Workforce Innovation providing free job announcement and applicant screening services to employers and placement services to job seekers. See also Agency for Workforce Innovation (AWI).

Parity: The percentage of minorities and women in the workplace mirrors the percentages of minorities and women in the available workforce for the county the project is being built as stated on the contract bid blank.

Proficiency Demonstration: The actual performance of work by a trainee in the presence of an FDOT/CEI observer and contractor's representative prior to graduation. Upon determination by the contractor that the trainee has reached journeyman/journeywoman status, the trainee should demonstrate a minimum of 3 pre-established essential proficiencies for the classification in which training has occurred. The proficiency demonstration must occur prior to graduation and be evaluated at a single demonstration.

Promotion: A personnel action, which results in an employee moving to a position requiring higher skill, knowledge, or ability and usually involving greater pay or title.

Project Workforce: Employees working at the physical location of a construction project; employees working 'on the site of work'.

Recruitment Source: Any person, organization, or agency used to refer or provide workers for employment consideration.

Race: A group of people united or classified together on the basis of history, nationality, or geographical distribution.

Rehire: To hire a formerly employed person**.**

Retaliation: The act of discriminating against a person due to their filing of an employment discrimination charge or testifying, assisting, or participating in any manner in such a charge.

Segregated Facilities: These are facilities belonging to or used in the course of business by an employer which provide different or separate accommodations for members of one race or sex than those provided others. Separate lavatories, lockers, showers, and other personal facilities for men and for women are not considered segregated facilities.

Sex Discrimination: This is a type of discriminatory or disparate treatment of an individual based on gender.

Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, and other written, verbal or physical conduct of a sexual nature constitute sexual harassment when: 1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; 2) Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual; 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Sexual Harassment is inclusive of unwelcome heterosexual and homosexual advances.

Special Provision: Specific clauses adding to or revising the Standard Specifications, setting forth conditions varying from or additional to the Standard Specifications for a specific project.

Show Cause Notice: A written notification to a contractor based on the determination of the reviewer (or in appropriate cases by a higher level of authority) to be in noncompliance with the equal opportunity requirements. The notice informs the contractor the specific basis for the determination and provides the opportunity, within 30 days from receipt, to present an explanation why sanctions should not be imposed.

Supportive Services: Those services provided in connection with approved on-the-job training programs for highway construction workers and highway contractors which are designed to increase the overall effectiveness of training programs through the performance of functions which are not generally considered as part of actual on-the-job craft training.

Supervisors: Employees primarily responsible for the work of other employees**.**

Temporary Employment Agency (TEA): A staffing agency which employs and places workers in temporary jobs at client work sites for a limited period of time.

Termination: When an employee leaves employment voluntarily or involuntarily.

Terms and Conditions of Employment: This phrase includes all aspects of the employment relationship between an employee and their employer including, but not limited to, compensation, fringe benefits, leave policies, job placement, physical environment, work-related rules, work assignments, training and education, opportunities for promotion, etc. and maintenance of a non discriminatory working environment.

Timetable: A specified time frame, required in all affirmative action plans and programs within which an employer seeks to achieve specific commitments.

Trainee: A trainee is one who has not previously worked in or been paid as a journeyman in the classification for which they are to be trained and has not previously completed such a program.

Training Classification: A craft in which a trainee receives on-the-job training, whether through an apprenticeship program or other programs approved or accepted by the FHWA.

Training Completion: A trainee enrolled in the On-the-Job training program who has achieved no less than the specified minimum hours of training in the classification enrolled, has demonstrated proficiency in the standards established for the classification, and where the contractor has requested graduation in a timely manner.

Two or More Races(not Hispanic or Latino) A person who identifies with more than one of the other races i.e,, white, black, American Indian or Alaskan Native, Native Hawaiian or other Pacific Islander, and/or Asian.

Unskilled Laborers: An employee who works under close supervision and performs basic tasks that are learned in a few days or hours. Unskilled laborers lift, dig, load, pull etc. and operate no equipment and use no tools.

USDOL (United States Department of Labor): A department of the Federal Government responsible for promoting the working conditions of wage earners in the United States; USDOL issues Wage Determinations, responds to Additional Wage Requests and issues regulations, mandates and interpretive memorandum pertaining to the 180 federal wage related laws it administers.

Wage Rate Decision: Minimum hourly rate and fringe benefit rate for individual job classifications for a specified type of work.

White (Not of Hispanic or Latino): Person having origins in any of the original peoples of Europe, North Africa or the Middle East.

Women: Adult Females

Workforce: The total number of people employed in a company.

Workplace: A place where work is performed, may include, work sites, properties, buildings, offices, structures, automobiles, trucks, trailers or other means of conveyance (private or public, while engaged in performance of duties), and parking areas, whether owned, leased or rented.

Working Day: The period of time in a day during which the contractor is expected to work.

Section 1.3

EQUAL OPPORTUNITY COMPLIANCE SYSTEM

1.3.1 Purpose

To provide a centralized reporting system for contractors and consultants to report and monitor payments made to DBEs and MBEs subcontractors and material suppliers. In Fall 2012, FDOT implemented a new Equal Opportunity Reporting System which replaced the previous version.

1.3.2 Scope

Prime contractors, FDOT staff, and consultants

1.3.3 Overview of the EOC System

The Equal Opportunity Compliance (EOC) system is an internet based system. It replaces previous systems including BizWeb, BizNet, and BizTrak. The EOC System currently supports the Departments' Disadvantaged Business Enterprise (DBE) data collection and reporting requirement. Additional system capabilities are planned for future releases.

This is a statewide password secured application used by FDOT prime contractors and consultants to log in and submit Bidder Opportunity, DBE commitments, and DBE monthly payment data electronically.

1.3.4 Accessing the EOC System; Addressing System Problems, Technical Assistance and Training

The EOC System serves DOT employees, consultants and contractors. The role played by a user and their business association determines how an individual user can obtain access to the EOC System. Refer to Workbook section 1.4 for the FDOT Equal Opportunity, EOC website to see when system information and training is available.

Section 1.4

DIRECTORY OF COMPLIANCE WEBSITES & ADDRESSES

WEBSITES		
Agency for Workforce Innovation		www.floridajobs.org
One Stop Centers		www.floridajobs.org/onestop
FDOT	DBE Directory	https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp
	DBE Payment Reporting	https://www3.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/LogIn?ReturnUrl=%2fEqualOpportunityCompliance%2f
	Equal Opportunity Office	www.dot.state.fl.us/equalopportunityoffice/
	EOC System: ➢ EOC Access information ➢ EOC system training	www.dot.state.fl.us/equalopportunityoffice/eoc.shtm
	Forms & Procedures	www.dot.state.fl.us/proceduraldocuments/
	FDOT Specifications	http://www.dot.state.fl.us/specificationsoffice/
	State Construction Office	www.dot.state.fl.us/construction
	Wage Information	www.dot.state.fl.us/construction/Wage.shtm
FHWA		www.fhwa.dot.gov
U.S. Dept. of Labor	USDOL Main Website address	www.dol.gov
	Wage Tables/Determinations	www.dol.gov/dba.aspx#0

U.S. MAIL ADDRESSES	
FDOT Equal Opportunity Office or 605 Suwannee St., MS 65 Tallahassee, Fl 32399	FDOT State Construction Office 605 Suwannee St. MS 31 Tallahassee, FL 32399

E-MAIL ADDRESSES	
FDOT Biz Web Computer Service	eoohelp@dot.state.fl.us
Prevailing Wage Coordinator	susan.robeson@dot.state.fl.us
Contractor Submittals for Approval of ➢ DBE AA Plans; ➢ Notification to FDOT of EEO Officer (275-021-13)	**EEOforms@dot.state.fl.us**

Section 1.5

CONTRACTOR COMPLIANCE REGISTER

1.5.1 Purpose

The Equal Opportunity Compliance System stores the basic identification and EEO compliance data of contractors in a file referred to as the "Contractor Compliance Register". Compliance staff (District and project) may read data stored in the Register. This data is not accessible to contractors in Phase 1 of the EOC System.

1.5.2 Scope

Prime contractors and subcontractors are included in the Compliance Register.

1.5.3 How a Contractor is added to the Register

A company's name and their Identification Number (FEID) may be added to the register by any of the following:

- The FDOT Transport System
- Contractor's submission of "Notification to FDOT of EEO Officer" (Form 275-021-13) to FDOT Equal Opportunity Office, Tallahassee
- Contractors submission of company's DBE AA Plan to FDOT Equal Opportunity Office, Tallahassee,

1.5.4 Data Reported in the Register

The data reported in the register and the source of that data is shown in Table 1.5.4.1.

Table 1.5.4.1
Data Reported in the Register

Section	Data	Where Data is Obtained
Contractor	Name of Company FEID number	Automatically supplied by the FDOT Transport System -or- input by EO office
Summary of Deduction Authorization	Uniform Authorization Expiration Date and Other Authorized Deductions: Type of Deduction and Expiration Date	Updated by Prevailing Wage Rate Coordinator, Tallahassee, upon receipt of Authorization approval letter
EEO Officer	Last name, first name, Title Phone/Fax numbers Email address	Notification to FDOT OF EEO Officer (Form 275-021-13). Prime can update their EEO Officer Information. EEO Officer of others is updated by EO Office
Corporate Official	Last name, first name, Title Phone/Fax numbers, Email address	Notification to FDOT OF EEO Officer (Form 275-021-13)
DBE AA Liaison Officer	Last name, first name, Title Phone/Fax numbers Email address	Contractor's DBE AA Plan. Prime can update their Officer information. DBE AA Officer of others is updated by EO Office
DBE AA Plan	Expiration Date	Set by Equal Opportunity Office

Section 1.6

PERFORMANCE DEFICIENCY COMMUNICATIONS AND ACTIONS

1.6.1 Purpose

Describes the Department's sanctions, communications, and timeframes for informing prime contractors of instances where the prime contractor and/or subcontractor(s) do not fulfill compliance requirements and/or meet timeframe requirements.

1.6.2 Noncompliance; Consideration of Good Faith Efforts

Deficiency communications may be issued to the prime, for the prime and/or subcontractor's noncompliance with compliance program requirements including the submission of required data in any element of the program:

- Disadvantaged Business Enterprise (DBE)
- Equal Employment Opportunity/Affirmative Action (EEO/AA)
- On-the-Job Training (OJT)
- Wage Rates and Payrolls.

A review of the contractor's good faith efforts to achieve compliance in any of the compliance areas (DBE, EEO, OJT and Wages) may be considered prior to issuance of noncompliance communications. Verifiable good faith efforts by the contractor evidence efforts to fulfill requirements and timeframes. A contractor's total efforts, which may include formal corrective action plans, demonstrate a contractor's good faith efforts. Actual good faith efforts vary from situation to situation. Characteristics of good faith efforts are summarized in Table 1.6.2., Characteristics of Good Faith Efforts.

If the contractor requests that deficiency communications be waived due to their good faith efforts to achieve compliance, the concurrence of the District Contract Compliance Manager is required.

1.6.3 Noncompliance Sanctions

Two (2) sanctions are concurrently applied when a performance deficiency exists:

- Withholding of Monthly Progress Estimate(s)
- Issuance of a Performance Deficiency Letter(s)

A project's Monthly Progress Estimate is withheld in its entirety for a performance deficiency. Subsequent Monthly Progress Estimate(s) are also withheld until the performance deficiency is satisfactorily resolved.

Upon the Department's receipt and verification of compliance with outstanding requirements, the withheld Monthly Progress Estimate(s) is released for payment processing. The Department's receipt and verification of compliance with outstanding performance deficiency requirements does not eradicate the Performance Deficiency. Continued performance warnings of performance deficiency may adversely affect the Contractors Performance Rating on the project.

Table 1.6.2 Characteristics of Good Faith Efforts

Good Faith Efforts are not:	Good Faith Efforts are:
A single action or 'a hit and run effort'	Integrated activities designed to achieve objectives
Put in place and then walked away from	Evaluated and redefined to obtain better results
Unverifiable	Documented and verifiable actions
A haphazard collection of voluminous documents	Evidenced by organized documentation
Random	Planned & thought out to achieve objective(s)
Static	Redirected by an analysis of results being obtained
A gamble; a long-shot	Sincere and designed to achieve results

1.6.4 Contractor's Past Performance Rating and Report

Performance Deficiency warnings and notices are included in the Department's Contractor Performance Rating program. Refer to Form No. 700-010-25, Contractor's Past Performance Report for complete information. The following Performance Category is most applicable to the Construction Contract Compliance Program:

- Category 3: Timely and Complete Submittal of Documents.

Following consultation with the District Contract Compliance Manager, the following Performance Categories may be cited for certain aspects of noncompliance:

- Category 5: Coordination/Cooperation with Department Personnel, etc.
- Category 8: Conformance with Contract Documents.

1.6.5 Noncompliance Communications

All communications regarding performance deficiency are addressed with the prime contractor for resolution. Communications may be via traditional mail or electronically via email. Table 1.6.5.1 "Summary of Noncompliance Communications" identifies the progressive level of Noncompliance Communications issued for each of the program areas (DBE, EEO, OJT, and Payroll).

A single Deficiency Warning and/or single Performance Deficiency letter addresses all deficiency conditions pertaining to all contractors on a project for one specific timeframe. Letters may include multiple performance rating categories and/or for multiple contractors.

One Notice of Noncompliance letter may be issued monthly summarizing noncompliance related to Disadvantaged Business Enterprises, Equal Employment Opportunity and On-the-Job Training.

Initial communication of non-receipt of payroll or a payroll violation is communicated immediately; they are not grouped into the monthly Notice of Noncompliance letters.

Non-receipt of Payroll is cited in a Notice of Noncompliance letter which may be issued any day of the month and as many times as necessary; notification that payroll has not been received does not wait for the monthly time frames in Table 1.6.5.3 Likewise, Payroll Violations (FDOT Form 700-010-59) are issued throughout the month and as many times as needed.

In cases of blatant or severe noncompliance a Performance Deficiency letter may be issued without a Notice of Noncompliance and/or without a Deficiency Warning letter.

Table 1.6.5.2 “Issuance of Performance Deficiency Communications” summarizes the four levels of communication which are available. Distribution of those communications is not limited to those listed. Attachment 1.6.4 provides examples of a citing for noncompliance communications.

Table 1.6.5.3 “Dates for Performance Deficiency Communications” identifies the standard issuance and documentation due dates for each level of noncompliance communication.

The format and content for each letter is shown in the noted attachments:

- Attachment 1.6.1-Notice of Noncompliance
- Attachment 1.6.2 - Performance Deficiency Warning Letter for Contract Noncompliance
- Attachment 1.6.3 - Performance Deficiency Letter for Contract Noncompliance
- Attachment 1.6.4 - Examples of Citing for Noncompliance

1.6.6 Recurring Notices of Noncompliance

The Notice of Noncompliance letter is the initial step in the sanction process; it is not a routine reminder of compliance requirements.

Following consultation with the District Contract Compliance Manager, a Performance Deficiency Letter may be issued due to recurring issuance of the Notice of Noncompliance letter and/or recurring issuance of payroll violations

Table 1.6.5.1 Summary of Noncompliance Communications

	Basis of Noncompliance		
	DBE-EEO-OJT: Noncompliance With Requirements	**Non-receipt Of Payroll**	**Payroll Violation**
Issue What?	Notice of Delinquency for Noncompliance Letter	Notice of Delinquency for Noncompliance Letter	Payroll Violation Form (#700-010-59) Including Notice and Intent to Withhold
Issue When?	See Table 1.6.5.3 for dates	Any Day of Month	Any Day of Month
Issue How Many Each Month?	One	Any Number	Any Number
When is the data due?	See Table 1.6.5.3 for dates	1st, 10th or 20th Day of Month (RCS' decision)	20 days following receipt of Payroll Violation
Continued Non-Compliance	⇩	⇩	⇩
Issue What?	Performance Deficiency Warning Letter Including Notice of Intent to Withhold Monthly Progress Estimate		@ Performance Deficiency Warning Letter Including Notice of Intent to Withhold Monthly Progress Estimate
Issue When?	See Table 1.6.5.3 for dates	Issue When?	See Table 1.6.5.3 for dates
Issue How Many Each Month?	One	Issue How Many Each Month?	One
When is the data due?	See Table 1.6.5.3 for dates		
Continued Non-Compliance	⇩		
Issue When?	See Table 1.6.5.3 for dates		
Issue How Many Each Month?	One		
When is the data due?	Contractor's discretion		
When is Payment Released	Upon receipt and verification of data		
Footnotes:			
@	Issuance of the letter is optional; depending on compliance history of contractor		

Table 1.6.5.2
Issuance of Performance Deficiency Communications

	PROGRESSIVE WRITTEN COMMUNICATIONS			
	Notice of Noncompliance	**Performance Deficiency Warning Letter Including Notice of Intent to Withhold Monthly Progress Estimate**	**Performance Deficiency Letter Including Notice of Withholding of Monthly Progress Estimate**	**Release of Withheld Monthly Progress Estimate**
	(Notice)	***(WDL)***	***(DL)***	***(Release)***
Signed By:	Project RCS	Project Administrator	Resident Engineer	Resident Engineer
Addressed To:	Prime Contractor's Superintendent	Prime Contractor's Superintendent	Prime Contractor's Superintendent	Prime Contractor's Superintendent
Distribute to Addressee by:	Fax or E-mail	Certified Mail with Return Receipt or via email with electronic return receipt	Certified Mail with Return Receipt or via email with electronic return receipt	Certified Mail with Return Receipt or via email with electronic return receipt
Issue official copies to:	Project Administrator		Project Administrator	Project Administrator
		Resident Engineer		
		Prime's Corporate Official	Prime's Corporate Official	Prime's Corporate Official
	Prime's EEO Officer	Prime's EEO Officer	Prime's EEO Officer	Prime's EEO Officer
		Project RCS	Project RCS	Project RCS
	DCCM	DCCM	DCCM	DCCM
		District Construction Engineer	District Construction Engineer	District Construction Engineer
			District Monthly Estimate Office	District Monthly Estimate Office
Distribute copies by:	Fax or E-mail	Fax or E-mail	Fax or E-mail	Fax of E-mail

Table 1.6.5.3
Dates of Noncompliance Communications

2014 Compliance Periods	**Notice of Noncompliance**		**Performance Deficiency Warning Letter Including Notice of Intent to Withhold Monthly Progress Estimate**		**Performance Deficiency Letter Including Notice of Withholding of Monthly Progress Estimate**	**Monthly Progress Estimate**	
	(Notice)		***(WDL)***		***(DL)***		
	Dates are adjusted for Early Estimate Cut Offs due to Holidays						
	Issue 6 Business Days (BD) after 20th. Submit 6 BD after Issue Date		Issue 5 Business Days (BD) before Submit By Date. Submit By last BD before Cut Off.		Issue 1st BD after Cut Off		
	Issue Date	Submit by Date	Issue Date	Submit by Date	Issue Date	Estimate for Month & Year:	Cut Off for this Estimate
Dec 1-31, 2013	**12-31-13**	**1-8-14**	**1-10-14**	**1-17-14**	**1-21-14**	**Jan 2014**	**1-19-14**
Jan 1-31, 2014	**1-28-14**	**2-5-14**	**2-7-14**	**2-14-14**	**2-10-14**	**Feb 2014**	**2-16-14**
Feb 1-28, 2014	**2-27-14**	**3-6-14**	**3-7-14**	**3-14-14**	**3-17-14**	**Mar 2014**	**3-16-14**
Mar 1-31, 2014	**3-28-14**	**4-8-14**	**4-11-14**	**4-18-14**	**4-21-14**	**Apr 2014**	**4-20-14**
Apr 1-30, 2014	**4-28-14**	**5-7-14**	**5-9-14**	**5-16-14**	**5-19-14**	**May 2014**	**5-18-14**
May 1-31 2014	**5-28-14**	**6-2-14**	**5-30-14**	**6-6-14**	**6-9-14**	**Jun 2014**	**6-8-14**
Jun 1-30, 2014	**7-1-14**	**7-7-14**	**7-7-14**	**7-18-14**	**7-21-14**	**Jly 2014**	**7-20-14**
July 1-31, 2014	**7-29-14**	**8-6-14**	**8-8-14**	**8-15-14**	**8-18-14**	**Aug 2014**	**8-17-14**
Aug 1-31, 2014	**8-28-14**	**9-5-14**	**9-12-14**	**9-19-14**	**9-22-14**	**Sept 2014**	**9-21-14**
Sep 1-30, 2014	**9-29-14**	**10-8-14**	**10-10-14**	**10-17-14**	**10-20-14**	**Oct 2014**	**10-19-14**
Oct 1-31, 2014	**10-26-14**	**10-29-14**	**11-7-14**	**11-14-14**	**11-17-14**	**Nov 2014**	**11-16-14**
Nov 1-30, 2014	**11-27-14**	**12-4-14**	**12-5-14**	**12-16-14**	**12-15-14**	**Dec 2014**	**12-14-14**
Dec 1-31, 2014	**12-31-14**	**1-7-15**	**1-9-15**	**1-16-15**	**1-20-14**	**Jan 2015**	**1-18-15**

Attachment 1.6.1
Notice of Noncompliance Letter

Date MM/DD/YY
Delivery Via Fax (#)
Or Delivery Via Email (specify email address)

Contractor's Superintendent
Prime Contractor's Company Name
Local Mailing Address

Financial Project ID:
FAP No:
Contract No.:
County:

RE: NOTICE OF NONCOMPLIANCE

A review of Department and project records indicates the following Noncompliance condition(s):

CONTRACTOR'S NAME:	NAME OF CONTRACTOR IN NONCOMPLIANCE
AREA OF NONCOMPLIANCE:	DBE, EEO/AA, OJT, or WAGES
DOCUMENT OR REQUIREMENT:	DOCUMENT NAME & FORM NO. OR DESCRIPTION OF REQUIREMENT
REPORTING TIMEFRAME:	SPECIFIC STATEMENT

(REPEAT FOR EACH CONTRACTOR &/OR AREA OF NONCOMPLIANCE)

This noncompliance is to be resolved by the close of business on mm/dd/yy. Resolution may be accomplished by mailing, faxing, or emailing the completed document(s) to me, the project's RCS, at the addresses shown.

Failure to comply may result in the issuance of a Performance Deficiency Warning Letter.

Please call me at xxx-xxx-xxxx or email me at (address) if I can provide additional information or assistance. Thank you for your cooperation.

Sincerely,

Project RCS

CC: Project Administrator
Prime's EEO Officer
District Contract Compliance Manager

Attachment 1.6.2
Performance Deficiency Warning Letter for Contract Noncompliance

Date MM/DD/YY
Delivery via Certified Mail # xxx; Return Receipt Requested
Or Delivery Via Email to (specify email address) with Electronic Return Receipt

Contractor's Superintendent
Prime Contractor Company Name
Local Mailing Address

Financial Project ID:
FAP No:
Contract No.:
County:

RE PERFORMANCE DEFICIENCY WARNING LETTER FOR CONTRACT NONCOMPLIANCE;
NOTICE OF INTENT TO WITHHOLD MONTHLY PROGRESS ESTIMATE

This is to advise that a Performance Deficiency Warning is hereby issued on this project for the following category(s):

(List all pertinent performance categories)

Category No. Performance Category Name

A Notice of Noncompliance was issued mm/dd/yy and the following noncompliance conditions have not been resolved as directed therein.
(List all unresolved Noncompliance conditions)

CONTRACTOR'S NAME:	NAME OF CONTRACTOR IN NONCOMPLIANCE
AREA OF NONCOMPLIANCE:	DBE, EEO/AA, OJT, or WAGES
DOCUMENT OR REQUIREMENT:	DOCUMENT NAME & FORM NO. OR DESCRIPTION OF REQUIREMENT
REPORTING TIMEFRAME:	SPECIFIC STATEMENT

This performance deficiency warning is to let you know that your company is out of compliance on the above Performance Category(s). If your company continues to work out of compliance a Performance Deficiency Letter will be issued, the Monthly Progress Estimate for mm/yy will be withheld, and your Contractor's Past Performance Rating will be adversely impacted. Your company needs to make all necessary corrections to ensure that all work is being performed in accordance with the contract.

This noncompliance is to be resolved by the close of business on mm/dd/yy.

Resolution may be accomplished by mailing, faxing, or emailing the completed document(s) to the project's RCS at the addresses shown.
Failure to comply may result in the withholding of the mm/yy Progress Estimate and issuance of a Performance Deficiency Letter. Please call me at xxx-xxx-xxxx or email me at (address) if I can provide additional information or assistance. Thank you for your cooperation

Sincerely,
Project Administrator

Cc: Resident Engineer
Prime's corporate official
Prime's EEO Officer
Project RCS
District Contract Compliance Manager
District Construction Engineer

Attachment 1.6.3
Performance Deficiency Letter for Contract Noncompliance

Date MM/DD/YY
Delivery via Certified Mail # xxx; Return Receipt Requested
Or Delivery Via Email to (specify email address) with Electronic Return
Contractor's Superintendent
Prime Contractor Company Name
Local Mailing Address

Financial Project ID:
FAP No:
Contract No.:
County:

RE PERFORMANCE DEFICIENCY LETTER FOR CONTRACT NONCOMPLIANCE;
WITHHOLDING OF MONTHLY PROGRESS ESTIMATE

This is to advise that a Performance Deficiency is hereby issued on this project for the following category(s):

(List all pertinent performance categories)

Category No. Performance Category Name

Previous notification on noncompliance conditions have been issued as follows:
mm/dd/yy –Notice of Noncompliance
mm/dd/yy –Performance Deficiency Warning Letter & Notice of Intent of Withhold Monthly Progress Estimate

This Performance Deficiency is issued due to the following unresolved Noncompliance Conditions
(List all unresolved Noncompliance conditions)

CONTRACTOR'S NAME:	NAME OF CONTRACTOR IN NONCOMPLIANCE
AREA OF NONCOMPLIANCE:	DBE, EEO/AA, OJT, or WAGES
DOCUMENT OR REQUIREMENT:	DOCUMENT NAME & FORM NO. OR DESCRIPTION OF REQUIREMENT
REPORTING TIMEFRAME:	SPECIFIC STATEMENT

This performance deficiency has impacted your final grade on your Contractor's Past Performance Rating. That rating will remain regardless of subsequent receipt and verification of the cited documentation.

The Monthly Progress Estimate for mm/yy has been withheld It will be released upon receipt and verification of data specified for each of the noncompliance conditions cited.

Resolution may be accomplished by mailing, faxing, or emailing the completed document(s) the project's RCS at the addresses shown.

Should you wish to contest the Department's action in issuing this Performance Deficiency, you may request a meeting with me within ten (10) calendar days of receipt of this letter. Please be advised that failure to resolve these conditions may result in the issuance of additional Performance Warnings and the withholding of subsequent Monthly Progress Estimates.

Sincerely,
Resident Engineer

Cc: District Construction Engineer, Project Administrator, DCCM, RCS
District Monthly Estimates Office
Prime's Corporate Officer, EEO Officer

Attachment 1.6.4
Examples of Citing for Noncompliance

REQUIRED ELEMENTS	
CONTRACTOR'S NAME	**NAME OF CONTRACTOR IN NONCOMPLIANCE**
AREA OF NONCOMPLIANCE	**DBE, EEO/AA, OJT, WAGES**
DOCUMENT OR REQUIREMENT	**DOCUMENT NAME & FORM NO. OR DESCRIPTION OF REQUIREMENT**
REPORTING TIMEFRAME:	**SPECIFIC STATEMENT**

Example 1: ONE CONTRACTOR MISSING ONE PROJECT EEO/AA REQUIREMENT	
CONTRACTOR'S NAME	XYZ Asphalt, Inc.
AREA OF NONCOMPLIANCE	EEO/AA
DOCUMENT OR REQUIREMENT	Job Site Bulletin Board (no form #)
REPORTING TIMEFRAME:	Job Site bulletin boards not erected as of begin work date of mm/dd/yy.

Example 2: PRIME CONTRACTOR MISSING AN OJT REQUIREMENT	
CONTRACTOR'S NAME	Consolidated Construction, Inc.
AREA OF NONCOMPLIANCE	OJT
DOCUMENT OR REQUIREMENT	OJT Training Schedule (#275-020-96)
REPORTING TIMEFRAME:	A revised OJT Schedule is required when a start date on the last approved schedule is missed by 14 or more days. No record of enrollment for the Rough Roller Operator Trainee scheduled to begin training on mm/dd/yy.

Example 3: ONE CONTRACTOR MISSING ONE OR MORE CERTIFIED PAYROLLS	
CONTRACTOR'S NAME	Subcontracting Specialist, Inc.
AREA OF NONCOMPLIANCE	Wages
DOCUMENT OR REQUIREMENT	Wage and Hour Record (#700-010-69) and accompanying payroll
REPORTING TIMEFRAME:	Certified Payroll for Pay Period ending mm/dd/yy not received within seven (7) days of regular payment date.

Example 4: ONE CONTRACTOR MISSING MULTIPLE ITEMS IN ONE PROGRAM AREA	
CONTRACTOR'S NAME	T's Roadway, Inc.
AREA OF NONCOMPLIANCE	EEO/AA
(A)DOCUMENT OR REQUIREMENT	EEO Officer Notice
(A)REPORTING TIMEFRAME:	EEO Officer not recorded prior to first work day
(B) DOCUMENT OR REQUIREMENT	Job Site Bulletin Board (no form #)
(B) REPORTING TIMEFRAME:	Job Site bulletin boards not erected as of begin work date of mm/dd/yy.

Example 5: ONE CONTRACTOR MISSING ITEMS IN TWO PROGRAM AREAS	
CONTRACTOR'S NAME	T's Roadway, Inc.
1ST AREA OF NONCOMPLIANCE	EEO/AA
(A)DOCUMENT OR REQUIREMENT	EEO Officer Notice
(A)REPORTING TIMEFRAME:	EEO Officer not recorded prior to first work day
2nd AREA OF NONCOMPLIANCE	WAGES
(A)DOCUMENT OR REQUIREMENT	Wage & Hour Record (#700-010-69) and accompanying payroll
(A)REPORTING TIMEFRAME:	Certified payroll for pay period ending mm/dd/yy not received within seven (7) days of regular payment date.

Section 1.7

COMPLIANCE REQUIREMENT SUMMARY

1.7.1 Purpose

The Contract Compliance program for FDOT construction contracts consists of four program areas:

- Disadvantaged Business Enterprises (DBE)
- Equal Employment Opportunity/Affirmative Action (EEO/AA)
- On-the-Job Training (OJT)
- Wages and Payrolls (PAYROLL)

Two functional areas in the Florida Department of Transportation, the Equal Opportunity Office and the State Construction Office, administer details pertinent to application of the Construction Contract Compliance program.

The following requirements administered by each of these offices impact the specific application of the Construction Contract Compliance Program:

- Equal Opportunity *Office*
- EEO Construction Contract Compliance Workbook
- FDOT DBE Program
- State Construction Office
- Standard Specifications for Bridge and Road Work ("Specifications")
- Construction Program Administration Manual ("CPAM")

There are many other FDOT offices, at the State and District level, with responsibility regarding the execution and content of construction contracts including, but not limited to:

Contract Administration Office(s): construction contracts administration including advertisement, bid opening and review, award and execution.

Specification and Design Office(s): technical content of the construction contract.

1.7.2 Disclaimer

This section of the Construction Contract Compliance Workbook is intended to serve as a general reference to contractors and compliance personnel regarding the specific compliance program requirements.

The procedures and practices of multiple FDOT offices impact each construction contract and various special circumstances impact these procedures and practices on a temporary or permanent basis.

1.7.3 Construction Contract Characteristics Directing Compliance Requirements

The specific characteristics of an individual construction contract determining which of the contract compliance program areas apply include:

- Type of Work
- Contract Funding
- Original Contract Days
- Original Contract Dollars.

These characteristics can be identified by reviewing the contract's Bid Blank and the contract's Specifications Package (which includes Standard Specifications, Special Provisions, and Technical Special Provisions).

When a project is funded with both FAP funds and state funds, the entire construction project is administered wholly under Federally Funded compliance requirements.

FDOT may on occasion, award emergency contracts for construction work related to government declared emergencies. Compliance reporting requirements on an emergency contract are determined at the time each contract is awarded.

1.7.4 Subcontracts and Rental Agreements

The prime contractor is responsible for assuring that all subcontractors are in compliance with the required Equal Employment Opportunity Special Provisions of the contract.

Prime contractors may accomplish the work of a project by entering into subcontract arrangements with written agreements ("subcontracts") containing the requirements and pertinent provisions of the prime's contract. Subcontractors may further subordinate their contract and such relationships are known as second tier, third tier (etc.) subcontracts.

Subcontract documentation submitted to FDOT by the prime includes a Certification of Sublet Work (Form 700-010-36) and a Schedule A indicating the sublet items and contract amount. The Subcontract is furnished to FDOT upon request.

Primes may also accomplish project work through the use of rental equipment which may or may not include an operator. Primes submit written documentation ("Notice of Rental Agreement", Form 700-010-11) to FDOT advising of rental arrangements, except where the rental (without an operator) is from equipment dealers or firms whose principle business is equipment rental.

The type of activity performed determines whether a subcontract or rental agreement is required. The dollar amount of the agreement and the inclusion of labor, directs compliance requirements.

Refer to Table 1.7.4.1 'Subcontract and Rental Agreement Summary' for guidance on Subcontracting and Rental Agreement requirements for federally funded and state funded projects.

Table 1.7.4.1
Subcontract and Rental Agreement Summary

line	Activity #	Rental Agreement *	Sublet *	EEO Required if over $10K	Payrolls required	Subject to Trucker Interview to confirm owner operator?
1	**Work within project limits**	**Yes &**	**Yes &**	**Yes**	**Yes**	**Yes**
2	**Hauling: within project limits**	**Yes &**	**Yes &**	**Yes**	**Yes**	**Yes**
3	**Suppliers (drop off & go)**	**No**	**No**	**No**	**No**	**No**
4	**From Commercial Plant/Pit to Project**	**No**	**No**	**Yes**	**No**	**No**
5	**Haul from Project to Commercial Plant/Pit**	**No**	**No**	**Yes**	**No**	**No**
6	**Haul from project to some other place- e.g. haul removed timber from project to lumber mill, etc**	**No**	**No**	**Yes**	**No**	**No**
7	**From/To Project From/To dedicated/Adjacent facility**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**

Footnotes:

General:	Not requiring submission of a sublet or a rental agreement for work in the amount of $10,000 or more does not preclude the prime contractor from assuring that all subcontractors are in compliance with the required EEO Special Provisions of the contract.
&	Either Rental Agreement or Sublet, whichever is appropriate.
#	Regardless of 'Activity', the Department may interview the driver of a truck being counted in DBE Utilization.
*	A sublet, subcontract, rental agreement, or lease, may be required for DBE monitoring/credit calculations.

1.7.5 Agencies Supplying Craft and Labor Workers

Prime contractors and subcontractors may elect to staff their project workforce with persons provided by staffing agencies. Staffing agencies which employ and place workers in temporary jobs at client work sites for a limited period of time are often referred to as Temporary Employment Agencies. Staffing agencies which employ and place workers in day to day jobs at client sites are often referred to as Day Labor Agencies.

At the job site, the contractor typically exercises supervisory control over agency workers. The contractor and the agency are joint employers of the temporary workers.
Agencies are typically responsible for all personnel and payroll administration of the worker, including recruitment, hiring, payment of wages, payroll withholding, workers' compensation, etc.

The contractor or subcontractor using a staffing agency issues written communication to FDOT outlining their use of an agency prior to any of their temporary workers appearing on the project. FDOT form number 275-021-15, Notification for Use of Temporary Employment Agency/Day Laborers is used by prime contractors and subcontractors to communicate to Resident Compliance Specialists their use of Temporary or Day Labor workers.

The contractor or subcontractor using a staffing agency is encouraged to provide copies of the following documents to the staffing agency prior to use of their personnel on a project:

1) Notification for Use of Temporary Employment Agency/Day Laborers
2) Contractor's EEO/AA Policy and Plan including EEO Officer
3) Project's Wage Table(s).
4) FHWA 1273, Required Contract Provisions, Federal Aid Construction

1.7.5.1 Directions for Completing the Notification for Use of Temporary Employment Agency/Day Laborers Form (275-021-15)

Distribution & Due Date: This form is to be submitted to the projects' Resident Compliance Specialist (RCS) by each contractor who will employ project workers through a Temporary Employment Agency ('TEA') or Day Labor Agency. The form is due to the RCS before any TEA workers report to the project site.

Section 1: Project Identification

Box 1: Financial Project No. – The Financial Project Number
Box 2: F.A.P. No. – The Federal Aid Project Number assigned to federally funded projects.
Box 3: Contract No. - The Project Contract Number
Box 4: County – County or counties where project work is being performed
Box 5: District – The Department's District number in which project work is being performed (Districts are 1-7, and the Turnpike District)
Box 6: Prime Contractor's Name – The name of Prime Contractor.
Box 7: Prime Contractor's FEID No. – The Prime Contractor's Identification Number
Box 8: Wage Table(s) applicable to this project – Check yes or no if construction type is Highway or Heavy and identify General Wage Decision Number *EG FL020001); Modification No (E.G. 1); Publication Date (E.G. 6/12/2005)

Section 2: Identification of Contractor & Temporary Agency

Box 9: Name of Contractor Using the Temporary Employment Agency – The name of contractor that hired temporary employment agency.
Box 10: FEID Number of Contractor Using Temporary Employment Agency - Identification Number of the contractor that hired temporary employment agency.
Box 11: Full Name of Temporary Employment Agency Used – The full name of temporary employment agency that will be providing temporary workers.
Box 12: FEID Number of Temporary Employment Agency – The temporary employment agency's Identification Number that will be providing temporary workers.
Box 13: Temporary Agency LOCAL Phone Number including area code – Area code and phone number of local temporary employment agency that will be providing temporary workers to the project.
Box 14: Temporary Agency Main Office Phone Number including area code – Area code and phone number of temporary employment agency main office.
Box 15: Temporary Agency LOCAL addresses street, city, state, and zip code Local temporary employment agency address (street, city, state and zip code).
Box 16: Temporary Agency Main Office addresses street, city, state, and zip code – Main temporary employment agency office address (street, city, state and zip code).
Box 17: Name of LOCAL contact for Temporary Employment Agency - First name and last name of contact person for local temporary employment agency.
Box 18: Phone number of LOCAL contact for Temporary Employment Agency Area code and phone number of contact person for local temporary employment agency.
Box 19: Workers from the Temporary Employment Agency will work under the supervision of the contractor Shown in box 9 – Identify what company will be supervising the temporary workers at the project site. If the hiring contractor (identified in box 9) will not be supervising workers, enter full name of organization that will be providing the supervision
Box 20: Date (mo/day/yr) workers will first be placed on the project

Section 3: Contractor's Acknowledgement That the Temporary Agency has been informed of the Contract Requirements

The hiring contractor acknowledges communicating to the temporary agency their responsibility for compliance with the following contract requirements:

Box 21: Pay at least the Minimum rates shown in the Wage Table Rates(s) Listed in # 8 above apply - Mark yes or no if temporary employment agency has been informed of the wage table rates listed in box 8.

Box 22: FHWA-1273, "Required Contract Provisions on Federal Aid Construction Contracts" applies – Mark yes or no if temporary employment agency has been informed of FHWA-1273 requirements.

Box 23: Certified payroll (Statement of Compliance and payroll records) is due to FDOT within 7 days of the regular pay – Mark yes or no if temporary employment agency has been informed of certified payroll due dates to FDOT.

Box 24: U.S. Dept. of Labor approval is required for non standard deductions – Mark yes or no if temporary employment agency has been informed of USDOL Approval requirements for non standard wage deductions.

Box 25: Workers will not be charged a fee or commission by the Temporary Agency Mark yes or no if temporary employment agency has been informed that workers may not be charged a fee or commission.

Box 26: Payroll violations corrections will be required – Mark yes or no if temporary employment agency has been informed payroll violations corrections will be required.

Box 27: The contractor's EEO/AA program encompasses the agency and the temporary workers – Mark yes or no if temporary employment agency has been informed that Equal Employment Opportunity/Affirmative Action program encompasses the agency and each temporary worker for this project.

Box 28: The Temporary Employment Agency is responsible for complying with the Contract provisions of the contract including but not limited to EEO, Payrolls, etc. – Mark yes or no if temporary employment agency has been informed that they are responsible for complying with the contract provisions of the contract including but not limited to Equal Employment, payrolls, etc.

Section 4: Signature of Prime and Hiring Contractor

Box 29: Prime Contractor Signature - Signature of Prime Contractor and date of signature

Box 30: Hiring Contractor Signature – Signature of hiring contractor and date of signature (complete only if hiring contractor is not the prime contractor).

1.7.6 Summary of Contract Compliance Reporting Requirements by Program Area

The following tables summarize the reporting requirements of each area of the compliance program:

Table 1.7.6.1	Summary of DBE Requirements
Table 1.7.6.2	Summary of Company EEO Requirements
Table 1.7.6.3	Summary of Project EEO Requirements
Table 1.7.6.4	Summary of On-the-Job Training Requirements
Table 1.7.6.5	Summary of Payroll and Wage Requirements

Refer to individual Compliance Workbook Chapters for comprehensive information on these requirements.

Table 1.7.6.1

Summary of DBE Requirements		FEDERALLY FUNDED		STATE FUNDED	
PROGRAM ELEMENT	**TIME FRAME**	**PRIME**	**Sub-contract ($10,000+)** **Rental ($10,000 +) with operator** **Suppliers or Subs (under $10k) or Rental w/out operator** **Agencies supplying job site workers**	**PRIME**	**Subcontract ($10,000+)** **Rental ($10,000 +)with operator** **Suppliers or Subs (under $10k) or Rental w/out operator** **Agencies supplying job site workers**
DBE /AA Plan	Initial submission before submission of bid	**YES**	**NO**	**YES**	**NO**
DBE Liaison Officer	Initial appointment at time of DBE/AA Plan adoption and throughout the term of the contract	**YES**	**NO**	**YES**	**NO**
Bid Opportunity List	Submitted using the EOC System.	**YES**	**NO**	**YES**	**NO**
DBE Commitments	Initially submitted in the EOC System before the Preconstruction Conference. Maintained throughout the contract. Updates will automatically occur in the EOC system.	**YES**	**NO**	**YES**	**NO**
Actual Payments to DBE's	Monthly entry of payments to DBEs in the EOC System	**YES**	**NO**	**YES**	**NO**
Footnotes:					
Y E S	Data is submitted in timeframe specified				

Table 1.7.6.2

Summary of Company EEO Requirements		FEDERALLY FUNDED				STATE FUNDED		
PROGRAM ELEMENT	**TIME FRAME**	PRIME	Sub Contractor ($10,000+) Rental Agreement ($10,000 +) with operator	Supplier Sub Contractor (under $10,000) Rental w/out operators	Agencies supplying job site workers	PRIME	Subcontractor ($10,000+)	Supplier Subcontractor (under $10,000) Rental w/out operators Agencies supplying job site workers
EEO/ AA Policy & Plan	Comply as Required by FHWA- 1273	**YES**	**YES**	**NO**	**NO***	**NO**	**NO**	**NO**
EEO Officer	Initial appointment before 1st work day	**YES**	**YES**	**NO**	**NO***	**YES**	**YES**	**NO**
Supervisory and Personnel Office EEO Meetings	Initial Meeting prior to 1st work day. Subsequent meetings at 6 mo. Intervals; new appointees within 30 days	**YES**	**YES**	**NO**	**NO***	**NO**	**NO**	**NO**
Company Wide EEO Report	To be made available upon request for a compliance review or determination of OJT.	**YES**	**YES**	**NO**	**NO***	**NO**	**NO**	**NO**
Contractor Recruitment Program	Initiate before 1st work day. Records to be made available upon request of FDOT or FHWA.	**YES**	**YES**	**NO**	**NO**	**NO**	**NO**	**NO**
Nonsegregated facilities	Throughout the term of the contract(s)	**YES**	**YES**	**NO**	**YES**	**NO**	**NO**	**NO**
Analysis for Non-discrimination	Throughout the term of the contract(s)	**YES**	**YES**	**NO**	**NO***	**NO**	**NO**	**NO**

Footnotes:	
Y E S	Data is submitted in timeframe specified
Y E S	Data is not routinely submitted to FDOT but records reflecting compliance are required.
*	Covered under data of employing contractor

Table 1.7.6.3

Summary of Project EEO Requirements		FEDERALLY FUNDED				STATE FUNDED		
PROGRAM ELEMENT	**TIME FRAME**	PRIME	Sub Contractor ($10,000+) Rental Agreement ($10,000 +) with operator	Supplier Subs (under $10,000) Rental w/out operator	Agencies supplying job site workers	PRIME	Sub Contractor ($10,000+)	Supplier Subcontractor (under $10,000) Rental w/out operators Agencies supplying job site workers
Job Site Bulletin Board	In place on or before workers first appear on the project; removed when workers are no longer on the project.	**YES**	**YES**	**NO**	**NO***	**NO**	**NO**	**NO**
Annual July EEO Report	Due by August 20th	**YES**	**YES**	**NO**	Included on Report of employing contractor if On-the-job the week reported	**NO**	**NO**	**NO**
EEO Information to Project Personnel	Routinely inform employees of EEO; no specified interval;	**YES**	**YES**	**NO**	Included in communications of employing contractor	**NO**	**NO**	**NO**
Race & Sex Annotation on certified payrolls	Each payroll submitted is annotated to include employee race and sex	**YES**	**YES**	**YES**	**YES**	**NO**	**NO**	**NO**
Project EEO Report(s)	To be made available upon request.	**YES**	**YES**	**NO**	Included on Report of employing contractor if on the job the week reported	**NO**	**NO**	**NO**

Footnotes:

Y E S	Data is submitted in timeframe specified
Y E S	Data is not routinely submitted for contracts let Jan. 2005 - August 2012 (i.e. Element is included in Certification of Compliance).

Table 1.7.6.4

Summary of On-the-Job Training Requirements		FEDERALLY FUNDED (Contract of at least $1 million and 225 days)		STATE FUNDED (OJT may be authorized on a voluntary basis for banking purposes provided the Contract is at least $1million and 225 days) and an RCS is avail. To monitor	
PROGRAM ELEMENT	**TIME FRAME**	**PRIME**	**Sub-contractor Enrolling & Instructing a Trainee**	**PRIME**	**Sub-contractor Enrolling & Instructing a Trainee**
Company Wide EEO Report	Due as requested and/or at or before Training Evaluation Meeting	**YES**	**YES**	**YES**	**YES**
Post Pre-Construction Training Evaluation Meeting	Conducted no more than thirty days prior to beginning construction or at another date agreeable to attendees. Meeting minutes are distributed with 14 days of their finalization with initial minutes issued as soon as practical and 14 days provided for requests to revise	**YES**	**YES**	**YES**	**YES**
On-the-Job Training Schedule	Due or developed at or within ten days of the Training Evaluation Meeting. Schedule Revisions are due when events are missed by 14 or more days, the use of additional classifications is requested or trainees terminate.	**YES**	**YES**	**YES**	**YES**
Proficiency Statements for each Training Classification on the OJT Schedule	Due or developed at or within ten days of the Training Evaluation Meeting for each training classification listed on the Schedule. Proficiency statements for additional classifications accompany OJT Schedule Revisions.	**YES**	**YES**	**YES**	**YES**
Notification of Trainee Personnel Action	Due within seven days of proposed effective date; Request to Graduate is due once minimum hours are accumulated and satisfactory observation occurs.	**YES**	**YES**	**YES**	**YES**
Request for Proficiency Observation	First and second observation request may be submitted based on trainee readiness and accumulation of at least minimum hours. Third and subsequent observation request require accumulation of maximum hours.	**YES**	**YES**	**YES**	**YES**
Trainee Monthly Time Reports	Due on the 10th day of the month for each month following enrollment of the trainee up to graduation of trainee	**YES**	**YES**	**YES**	**YES**
Footnotes:					
Y E S	Data is submitted in timeframe specified				

Table 1.7.6.5

Summary of Payroll & Wage EEO Requirements		FEDERALLY FUNDED				STATE FUNDED		
PROGRAM ELEMENT	**TIME FRAME**	PRIME	Sub Contractor (all dollar amounts) / Rental Agreement with operator (all dollar amounts)	Supplier / Rental w/out operators	Agencies supplying job site workers	PRIME	Sub Contractor (all dollar amounts) / **Rental Agreement with operator (all dollar amounts)**	Supplier / Rental w/out operators / Agencies supplying job site workers
Labor/EEO Compliance Interview of craft and laborer Workers	Conducted each month. This form is completed by FDOT	**YES**	**YES**	**NO**	**YES**	**NO**	**NO**	**NO**
Certified Payrolls	Due 7 days after regular pay day for each week in which any contract work is performed	**YES**	**YES**	**NO**	**YES**	**NO**	**NO**	**NO**
Payroll Annotated with employee race and sex	Each payroll is annotated to include employee race and sex	**YES**	**YES**	**NO**	**YES**	**NO**	**NO**	**NO**
Additional classification Request	As needed during the term of the contract and after contract award	**YES**	**YES**	**NO**	**YES**	**NO**	**NO**	**NO**
Request to U.S. DOL for Authorization of Payroll Deductions	Prior to employing workers on the project and as needed to ensure continuity of authorization.	**YES**	**YES**	**NO**	**YES**	**NO**	**NO**	**NO**
Supplemental Certified Payrolls submitted to resolve Payroll Violation(s)	Due within twenty (20) calendar days following receipt of payroll violation notification (FDOT form 700-010-59)	**YES**	**YES**	**NO**	**YES**	**NO**	**NO**	**NO**
Footnotes:								
Y E S	Data is submitted in timeframe specified							

1.7.7 Local Area Projects including American Recovery and Reinvestment Act Projects

FDOT has legislative authority to contract with Florida's Local Agencies to plan, develop, design, acquire right-of-way, and construct transportation facilities. FDOT reimburses these Local Agencies for services provided to the public. The formal name given to this program is the Local Agency Program (LAP). Authority for LAP is provided in Sections 20.23(3) (a), 334.044(7), 339.05, and 339.12 of the Florida Statutes.

A Local Agency is defined as a unit of government with less than statewide jurisdiction or any officially designated public agency or authority of such a unit of government that has responsibility for planning, construction, operation or maintenance of, or jurisdiction over, a transportation facility. The term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization (MPO), an expressway or transportation

authority, a road and bridge district, a special road and bridge district, or a regional governmental unit.

Some LAP construction projects are funded by the American Recovery and Reinvestment Act ('ARRA') and are identified with a Federal Aid Project number which begins with 'ARRA'. The Davis Bacon and Davis Bacon Related Acts apply to all ARRA funded projects regardless of the classification of the highway system.

FDOT's LAP and ARRA projects are federally funded and therefore, required to conform to FHWA 1273, Required Contract Provisions of Federal Aid Construction Contracts.

If the work of a LAP or ARRA project does not include a Federal Aid Highway, the National Highway System or the State Highway system, compliance with the Davis Bacon and Copeland Acts generally does not apply; however there are certain exceptions.

Projects of the following types are subject to Davis Bacon and Copeland Act prevailing wage requirements, notwithstanding that they may be located "off-system":

- Safe Routes to Schools projects
- Non-motorized Transportation Pilot Projects
- High priority and other congressionally designated projects (unless the requirement is specifically waived in legislation)).

The FDOT District LAP Administrator, or District Contract Compliance Manager, or Prevailing Wage Coordinator should be consulted prior to the start of construction for written confirmation that a LAP or ARRA project is exempt from Davis Bacon and Copeland Act payroll and reporting requirements.

Contractors of LAP projects (including ARRA projects) may evidence compliance with FHWA 1273 and Davis Bacon and Copeland Acts by adhering to either the forms and reporting requirements of the specific local agency or by conforming to the forms and requirements of the FDOT EEO Construction Contract Compliance Workbook. The Local Agency informs contractors of the requirements to be followed.

The applicability of the DBE, EEO, Payroll and OJT compliance for LAP projects (including ARRA projects) is summarized in Table 1.7.7.1

Table 1.7.7.1
EEO Construction Contract Compliance Requirements for Local Area Program ('LAP') including American Reinvestment & Recovery Act ('ARRA') projects

Contract Compliance Program Area	Project On State Highway System including Federal Aid Highways, National Highway System, State Highway System	Project on all other roads including Rural Minor Collector Rural Local Urban Local Roads
DBE	Yes (&)	Yes
EEO	Yes (@)	Yes
Certified Payrolls/Wages	Yes (+)	Yes if ARRA Project; No if not ARRA project (**^**)
OJT	Yes (#) if 225 or more days and $1M or more and not an enhancement project	No
	No if enhancement project (regardless of contract days and/or dollars) No if less than 225 days and/or under $1M	
Footnotes:		
&	See Federally Funded columns on Table 1.7.6.1, Summary of DBE Requirements	
@	See Federally Funded columns on Table 1.7.6.2, Summary of Company EEO Requirements, and See Federally Funded columns on Table 1.7.6.3, Summary of Project EEO Requirements	
+	See Federally Funded columns on Table 1.7.6.5, Summary of Payroll & Wage Requirements	
#	See Federally Funded columns on Table 1.7.6.4, Summary of On-the-Job Training Requirements	
^	The FDOT District LAP Administrator, or District Contract Compliance Manager, or Prevailing Wage Coordinator should be consulted prior to the start of construction for written confirmation that a LAP or ARRA project is exempt from Davis Bacon and Copeland Act payroll and reporting requirements	

1.7.8 Contractors with Collective Bargaining Agreements

FHWA 1273, Required Contract Provisions Federal Aid Construction Contracts apply to all contactors with contracts of $10,000 or more including contractors with signatory collective bargaining union agreements. The following provisions in FHWA 1273 are specific to contractors with collective bargaining agreements:

II. Nondiscrimination
- 4a. 4b. Recruitment
- 6. Training
- 7. Unions
- 9. a (2) Records and Reports

A collective bargaining agreement does not preclude the contractor's compliance with EEO/AA requirements including the employment of a diverse workforce. The provisions of a collective bargaining agreement and/or the failure of the union to provide equal opportunity does not excuse a contractor from complying with the EEO/AA requirements of FHWA 1273.

1.7.8.1 Collective Bargaining Agreement

Prior to starting work on a federally funded project, contractors with collective bargaining agreements covering the construction craft and labor workforce are to submit a copy of current executed agreements, in their entirety, to the District Contract Compliance Manager. The contract will be reviewed relative to the following compliance requirements:

- Scope: geographical area and work classifications
- Hiring requirements
- Training programs
- Union dues and initiation fees

1.7.8.2 Florida: A Right to Work State

Florida's Constitution states, "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization". Florida is therefore known as a "Right to Work state" meaning that workers are free to join unions or refrain from joining unions. In Florida, employers may not require an employee to join a union, pay union dues or be a union member as a condition of employment.

1.7.8.3 Collective Bargaining Agreement: Hiring Hall Requirements

A "hiring hall" is an arrangement where employers obtain job candidates from the union. A hiring hall furnishes recruits to contractors who have a collective bargaining agreement with the union. The contractor's use of the hiring hall may be voluntary or it may be compulsory (exclusive) per the terms of the collective bargaining agreement.

A union's failure to send minority and/or female candidates to a contractor is not justification for the contractor's non-compliance with EEO/AA requirements including the employment of a diverse workforce. The contractor must use its best efforts to obtain the cooperation of their union to increase opportunities for women and minority groups within their membership and to effect the referral of minority and female candidates.

In the event the union is unable to provide the contractor with a timely flow of diverse, qualified candidates, the Department will look to the contractor to initiate the recruitment activities detailed in Workbook Section 3.5, Recruitment.

1.7.8.4 Record Keeping for Contractors having Collective Bargaining Agreements

The contractor is to maintain records that show efforts to secure the union's commitments to EEO/AA including minority and female recruitment. The contractor's applicant log is to include all union referrals such that the diversity of referrals may be analyzed. If the contractor refers applicants to the union, the contractor is to maintain a log of the outcome of those referrals.

Section 1.8

GENERAL PROGRAM FORMS & DOCUMENTS

This is list of forms and documents referenced in this chapter. Following this page, in numerical order are the forms and then in alphabetical order the documents.

NUMERICAL SEQUENCE

FDOT Form No.	Document Title	Work Book Section
275-021-15	Notification for Use of Temporary Employment Agency/Day Laborers	1.7.5
700-011-13	Certification of Compliance With Equal Employment Opportunity (EEO) Provisions on Federal Aid Contracts	1.1.9
700-010-25	Contractor's Past Performance Rating	1.6.4
n-a	FHWA 1273, Required Contract Provisions, Federal Aid Construction, May 1, 2012	1.1.8

ALPHABETICAL SEQUENCE

Document Title	FDOT Form No.	Work Book Section
Certification of Compliance With Equal Employment Opportunity (EEO) Provisions on Federal Aid Contracts	700-011-13	1.1.9
Contractor's Past Performance Rating	700-010-25	1.6.4
FHWA 1273, Required Contract Provisions, Federal Aid Construction, May 1, 2012	n-a	1.1.8
Notification for Use of Temporary Employment Agency/Day Laborers	275-021-15	1.7.5

CONTRACTOR NOTIFICATION TO FDOT FOR USE OF TEMPORARY EMPLOYMENT AGENCY / DAY LABORERS

SECTION 1: PROJECT IDENTIFICATION

1. .Financial Project No.	2. F.A.P. No.	3. Contract No.	4. County	5. District

6.Prime Contractor's Name	7. Prime Contractor's FEID No.

8. Wage Table(s) Applicable to this Project (Indicate Yes or No for each type and identify Decision No., Modification No & Publication Date)

	CONSTRUCTION TYPE	*GENERAL DECISION NO. (E.G. FL030037)*	*MODIFICATION NO.(E.G. 1)*	*PUBLICATION DATE (E.G. 6/12/2009)*
☐ Yes ☐ No	**HIGHWAY**			
☐ Yes ☐ No	**HEAVY**			

SECTION 2: IDENTIFICATION OF CONTRACTOR AND TEMPORARY AGENCY

9. Name of Contractor Using the Temporary Employment Agency	**10. FEID Number of Contractor Using Temporary Agency**
11 .Full Name of Temporary Employment Agency Used	**12. FEID Number of Temporary Employment Agency**
13. Temporary Agency LOCAL Phone Number including area code	**14. Temporary Agency Main Office Phone Number including area code**
15. Temporary Agency LOCAL address street, city, state, zip code	**16. Temporary Agency Main Office address street, city, state, zip code**
17. Name of LOCAL contact for Temporary Employment Agency	**18. Phone number of LOCAL contact for Temporary Employment Agency**
19. Workers from the Temporary Employment Agency will work under the supervision of the contractor shown in box 9.	**20. Date (mo/day/year) workers will first be placed on the project**
☐ Yes ☐ No; **If No, identify which company/workers will provide supervision**	

SECTION 3: CONTRACTOR'S ACKNOWLEGEMENT THAT THE TEMPORARY AGENCY HAS BEEN INFORMED OF THE FOLLOWING CONTRACT REQUIREMENTS

21. Workers are to paid at least the minimums show in the Wage Table Rates(s) Listed in # 8 (above)	☐ Yes ☐ No
22. FHWA 1273, "Required Contract Provisions on Federal Aid Construction Contracts" applies	☐ Yes ☐ No
23. Certified payrolls (Statement of Compliance and payroll records) are due to FDOT within 7 days of the regular pay	☐ Yes ☐ No
24. U.S. Dept. of Labor approval is required for non-standard deductions	
25. Workers will not be charged a fee or commission by the Temporary Agency	☐ Yes ☐ No
26. Payroll violations require correction and submission of a supplemental certified payroll	☐ Yes ☐ No
27. The contractor's EEO/AA program applies to the Agency and the temporary workers	☐ Yes ☐ No
28. The Temporary Employment Agency is responsible for complying with the Contract provisions of the contractor including but not limited to EEO, Payrolls, etc.	☐ Yes ☐ No

SECTION 4: SIGNATURE

28. Prime Contractor Signature	Date	30. Hiring Contractor Signature	Date

CONTRACTOR NOTIFICATION TO FDOT FOR USE OF TEMPORARY EMPLOYMENT AGENCY / DAY LABORERS
Instructions for Completing Form

Distribution & Due Date: This form is to be submitted to the projects' Resident Compliance Specialist (RCS) by each contractor who will employ project workers through a Temporary Employment Agency ('TEA') personnel of Day Laborer Agency. The form is due to the RCS before any TEA workers report to the project site.

Section 1: Project Identification

Box 1: Financial Project No. – The Financial Project Number
Box 2: F.A.P. No. – The Federal Aid Project Number assigned to federally funded projects.
Box 3: Contract No. - The Project Contract Number
Box 4: County – County or counties where project work is being performed
Box 5: District – The Department's District number in which project work is being performed in (Districts are 1-7, and the Turnpike District)
Box 6: Prime Contractor's Name – The name of Prime Contractor.
Box 7: Prime Contractor's FEID No. – The Prime Contractor's Federal Identification Number
Box 8: Wage Table(s) applicable to this project – Check yes or no if construction type is Highway or Heavy and identify General Wage Decision Number *EG FL020001); Modification No (E.G. 1); Publication Date (E.G. 6/12/2005)

Section 2: IDENTIFICATION OF CONTRACTOR & TEMPORARY AGENCY

Box 9: Name of Contractor Using the Temporary Employment Agency – The name of contractor that hired temporary employment agency.
Box 10: FEID Number of Contractor Using Temporary Employment Agency - Federal Identification Number of the contractor that hired temporary employment agency.
Box 11: Full Name of Temporary Employment Agency Used – The full name of temporary employment agency that will be providing temporary workers.
Box 12: FEID Number of Temporary Employment Agency – The temporary employment agency Federal Identification Number that will be providing temporary workers.
Box 13: Temporary Agency LOCAL Phone Number including area code – Area code and phone number of local temporary employment agency that will be providing temporary workers to the project.
Box 14: Temporary Agency Main Office Phone Number including area code – Area code and phone number of temporary employment agency main office.
Box 15: Temporary Agency LOCAL address street, city, state, zip code – Local temporary employment agency address (street, city, state and zip code).
Box 16 Temporary Agency Main Office address street, city, state, zip code – Main temporary employment agency office address (street, city, state and zip code).
Box 17: Name of LOCAL contact for Temporary Employment Agency - First name and last name of contact person for local temporary employment agency.
Box 18: Phone number of LOCAL contact for Temporary Employment Agency - Area code and phone number of contact person for local temporary employment agency.
Box 19: Workers from the Temporary Employment Agency will work under the supervision of the contractor Shown in box 9 – Identify what company will be supervising the temporary workers at the project site. If the hiring contractor (identified in box 9) will not be supervising workers, enter full name of organization that will be providing the supervision
Box 20: Date (mo/day/year) workers will first be placed on the project

Section 3: CONTRACTOR'S ACKNOWLEGEMENT THAT THE TEMPORARY AGENCY HAS BEEN INFORMED OF THE FOLLOWING CONTRACT REQUIREMENTS

The hiring contractor records acknowledges communicating to the temporary agency their responsibility for compliance with the following contract requirements:

Box 21: Pay at least the Minimum rates shown in the Wage Table Rates(s) Listed in # 8 above apply - Mark yes or no if temporary employment agency has been informed of the wage table rates listed in box 8.

CONTRACTOR NOTIFICATION TO FDOT FOR USE OF TEMPORARY EMPLOYMENT AGENCY / DAY LABORERS
Instructions for Completing Form

Box 22: FHWA 1273, "Required Contract Provisions on Federal Aid Construction Contracts" applies – Mark yes or no if temporary employment agency has been informed of FHWA 1273 requirements.
Box 23: Certified payroll (Statement of Compliance and payroll records) is due to FDOT within 7 days of the regular pay – Mark yes or no if temporary employment agency has been informed of certified payroll due dates to FDOT.
Box 24: U.S. Dept. of Labor approval is required for non-standard deductions – Mark yes or no if temporary employment agency has been informed of USDOL Approval requirements for non-standard wage deductions.
Box 25: Workers will not be charged a fee or commission by the Temporary Agency – Mark yes or no if temporary employment agency has been informed that workers may not be charged a fee or commission.
Box 26: Payroll violations corrections will be required – Mark yes or no if temporary employment agency has been informed payroll violations corrections will be required.
Box 27: The contractor's EEO/AA program encompasses the agency and the temporary workers – Mark yes or no if temporary employment agency has been informed that Equal Employment Opportunity/Affirmative Action program encompasses the agency and each temporary worker for this project.
Box 28: The Temporary Employment Agency is responsible for complying with the Contract provisions of the contract including but not limited to EEO, Payrolls, etc.– Mark yes or no if temporary employment agency has been informed that they are responsible for complying with the contract provisions of the contract including but not limited to Equal Employment, payrolls, etc.

Section 4: SIGNATURE OF PRIME & HIRING CONTRACTOR

Box 29: Prime Contractor Signature - Signature of Prime Contractor and date of signature
Box 30: Hiring Contractor Signature – Signature of hiring contractor and date of signature (complete only if hiring contractor is not the prime contractor).

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

Form 700-011-13
CONSTRUCTION
06/05

CERTIFICATION
COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROVISIONS ON FEDERAL AID CONTRACTS

DATE _____

FIN PROJECT I.D. _____ CONTRACT NO. _____

_____

_____

_____

_____, prime contractor

for the above referenced contract, hereby certifies that this company and all of it's subcontractors have made every Good Faith Effort to comply with the EEO provisions of FHWA Form-1273 (Section II. Nondiscrimination and Section III. Nonsegregated facilities) on this contract.

Exception:
The following subcontractor(s) have been found to be in noncompliance with the provisions stated above. Attached is notification sent to the respective subcontractor(s) explaining their noncompliance with these provisions.

Subcontractor Name	Subcontractor Name
Street Address	Street Address
City/State/Zip	City/State/Zip

State of Florida
County of _____
Sworn to and subscribed before me this _____ day
of _____, _____, by _____
(Print name of person signing Certication)

A false statement or omission made in connection with this certification is sufficient cause for suspension, revocation, or denial of qualification to bid, and a determination of nonresponsibiity, and may subject the person and/or entity making the false statement to any and all civil and criminal penalties available pursuant to applicable Federal and State law.

Notary Public

Contractor

Commission Expires

By

Personally Known ☐ OR Produced Identification ☐

Title

Type of Identification Produced _____

Instructions:

1. Attach copy of any notifications of noncompliance sent to each applicable subcontractor.
2. List the subcontractors found not in compliance at the time of this certification.
3. A separate certification is required for each contract.
4. To be signed by an officer or director of the Contractor with the authority to bind the Contractor and notarized.
5. To avoid delay in payment, certification must be submitted to the Project Engineer no later than the Friday before the monthly estimate cutoff date (generally the 3rd Sunday of the month).

CONTRACTOR'S PAST PERFORMANCE REPORT

(Contractor Name) _____ (FIN Project No.) _____

(Address) _____ (County) _____ (Contract No.) _____

(Final Contract Amount) _____ (Type Of Work) _____

(Proj. Administrator/Firm or Residency) _____ (Date Final Accepted) _____

ANSWER ALL QUESTIONS

Performance	Maximum Value	Rated Value
1. Pursuit of the Work.	12	_____
2. Proper MOT and Minimize Impacts to Traveling Public	12	_____
3. Timely and Complete Submittal of Documents.	8	_____
4. Timely Completion of Project.	14/20 note # 4	_____
5. Coordination / Cooperation with CEI Personnel, Property Owners and Utilities Company.	10	_____
6. Mitigate Cost and Time Overruns	12	_____
7. Environmental Compliance	10/12 note # 4	_____
8. Conformance With Contract Documents.	20	_____
9. DBE Utilization	0/4 note # 4	_____
Total Score	98/110	0

Project Administrator (signature) _____ Date _____ **Resident Engineer** (signature) _____ Date _____

Notes:

1. Where percentages are used, the standard rules of rounding are to apply to calculate the nearest whole number.

2. Documentation (or document) unless otherwise noted is defined as Daily Report of Construction, Stop Work Orders, Speed Memos, or other such notes or communication in the project files or to the contractor from the CEI. Proper documentation on a daily basis is essential in providing an accurate, well established grade.

3. The term contractor includes the prime and all subcontractors and suppliers. The prime contractor is responsible for the quality of material, workmanship and timeliness for all work on the project.

4. Bonus points are available on categories 4, 7, and 9. Category 4 bonus points (6 points) and Category 9 bonus points (4 points) apply to all projects. Category 7 bonus points (2 points) apply only to projects over 300 days of allowable contract time.

5. Performance Deficiency Warning Letter – under normal circumstances, project personnel will notify the contractor of shortcomings/non-compliances with the contract prior to issuing a Performance Deficiency letter. However, blatant violations or noncompliances may result in a Performance Deficiency letter being issued without a warning. Prior to issuing a warning letter, the Project Administrator should discuss the performance concerns with the Resident Engineer. A single warning letter can be used to address concerns in more than one performance category.

6. Performance Deficiency Letter – letters from the Resident Engineer to the contractor for the sole purpose of addressing specific performance concerns or issues. This does not include those items previously covered under the definition of Documentation. Performance Deficiency letters shall be signed by the Resident Engineer and sent out via certified mail, return receipt requested. A single Performance Deficiency letter can be used to address concerns in more than one performance category. It is recommended that the Project Administrator keep a file for each project for all warning and deficiency letters.

7. The Performance Deficiency letter factor will apply for all jobs over one (1) year. The factor will be based on 365 days/year divided by the allowable contract time. This factor will then be multiplied by the number of Performance Deficiency letters in each grading category to obtain a “pro-rated” (annualized) number of Performance Deficiency letters. The standard rules of rounding will apply. For projects with contract time less than 365 days, the Performance Deficiency letter frequency and the corresponding grades shown in this document will apply.

   $\frac{365 \text{ days/year}}{\text{allowable contract days}}$ = Deficiency Letter Factor (DLF)

   (DLF) x # Deficiency letters issued in a particular grading category = “pro-rated” # deficiency letters for the particular grading category

The Performance Deficiency letter factor example

365 days/year		DLF		# deficiency letters		pro-rated # letters	grade
500 allowable days	=	0. 7	x	category 2 total 6 letters	=	total 4.2 DL	= 4.0

8. Appeals process – if a contractor receives a Performance Deficiency letter and feels that it was not warranted, the contractor may appeal the issue at the District Construction Engineer (DCE) level within 10 days of receiving the letter. If an appeal is successful, the DCE will issue a letter rescinding the Performance Deficiency letter. In addition, for those performance categories that do not include the use of Performance Deficiency letters, the contractor may use the appeals process (for categories # 1, 4, and 8) when issued ten (10) days of the receipt of the letter to appeal performance issues/concerns for that month. The Department will communicate performance progress in categories # 1, 4, and 8 on a monthly basis.

9. Contractor Responsibility – the contractor is responsible to keep abreast of performance issues. This can be done by discussing performance with the Project Administrator on a daily basis, reviewing the Department's daily diaries and discussing contractor performance at the weekly progress meetings.

CONTRACTOR PAST PERFORMANCE RATING

1. **Pursuit of The Work** - Contractor diligently and systematically pursues the work with sufficient labor, materials, and equipment at all times. Active progress is made on critical path items each day in accordance with the approved schedule. The contractor schedules the subcontractors so that they are pursuing their work as well. Contractor worked five (5) days a week unless the contract states otherwise, excluding weather days. Percent is based on allowable contract time (minus weather days) and on a five (5) workday week unless otherwise stated in the contract.

12 The contractor aggressively pursued the work 90% of the days. Documentation in the project files by the CEI reveals that the progress of the work was unsatisfactory no more than 10%.

9 The contractor aggressively pursued the work 80% of the days. Documentation in the project files by the CEI reveals that the progress of the work was unsatisfactory no more than 20%.

6 The contractor aggressively pursued the work on at least 70% of the days. Documentation in the project files by the CEI reveals that progress of the work was unsatisfactory no more than 30%.

3 The contractor aggressively pursued the work on at least 60% of the days. Documentation in the project files by the CEI reveals that progress of the work was unsatisfactory no more than 40%.

0 The contractor did not aggressively pursue the work on at least 50% of the days. Documentation in the project files by the CEI reveals that progress of the work was unsatisfactory no more than 50%.

Note: Grades between those shown will be based on an extrapolation of the actual percentage of the days the contractor aggressively pursued the work., i.e., 86% of the days would equate to a grade of 11. The status of performance in this category should be shared with the Contractor on a monthly basis.

2. **Proper MOT and Minimize Impacts to Traveling Public** - Provide maintenance of traffic (MOT) in accordance with all applicable standards. Coordinate construction operations that directly affect the traveling public so as to minimize impacts to the public. Effectively use the worksite Traffic Supervisor to monitor and correct deficiencies. The contractor takes the initiative to identify and fix MOT concerns in a timely manner.

12 The contractor met all project requirements in all areas considered. The contractor corrected deficiencies promptly (maximum of 24 hours) based on timely internal reviews as well as external feedback. Contractor took immediate action, as appropriate, to minimize impacts to the public and businesses, including adjusting operations as necessary. No deficiency letter to the contractor by the CEI noting MOT deficiencies.

10 No more than one (1) deficiency letter to the contractor by the CEI noting MOT deficiencies.

8 No more than two (2) deficiency letters to the contractor by the CEI noting MOT deficiencies.

6 No more than three (3) deficiency letters to the contractor by the CEI noting MOT deficiencies.

4 No more than four (4) deficiency letters to the contractor by the CEI noting MOT deficiencies.

2 No more than five (5) deficiency letters to the contractor by the CEI noting MOT deficiencies.

0 Six (6) or more deficiency letters to the contractor by the CEI noting MOT deficiencies.

3. **Timely and Complete Submittal of Documents** - Contractor submits all required documents in a timely and accurate manner and with all the required information and detail. Documents include sublet requests, rental agreements, certification of materials, shop drawings, responses to correspondence, monthly certification, time extension requests, project schedules and schedule updates, claims for delay or extra work, quality control plans, test results, work plans, weekly MOT, NPDES reviews, etc. For EEO/DBE submittals, trainee submittals, certified payrolls, and statewide DBE utilization reporting, a deficiency letter will only be issued on these documents when a monthly estimate is actually withheld.

8 The contractor submitted documents in a complete and accurate manner and in a time frame required in the contract.

6 No more than one (1) deficiency letter to the contractor by the CEI documenting late or insufficient submittal documentation.

4 No more than two (2) deficiency letters to the contractor by the CEI documenting late or insufficient submittal documentation.

2 No more than three (3) deficiency letters to the contractor by the CEI documenting late or insufficient submittal documentation.

0 Four (4) or more deficiency letters to the contractor by the CEI documenting late or insufficient submittal documentation.

4. **Timely Completion of Project** - The contractor completes the project in a timely manner.

20 * The contractor finished the project within the original contract time. (no adjustments for weather)

18 * The contractor finished the project within 90% of allowable contract time.

16 * The contractor finished the project within 95% of allowable contract time.

14 * The contractor finished the project within the allowable contract time.

7 The contractor did not complete the project within the allowable contract time, but did finish the project in less than 10% over the allowable contract time.

0 The contractor completed the project more than 10% over the allowable contract time.

* 14 is the normal, expected standard because the vast majority of the projects finish within the allowable time. A score of up to 20 is a bonus, which recognizes that a contractor may have to work thru weather, utilities, added work, or other unforeseen conditions or delays.

5. **Coordination / Cooperation with Construction Engineering Inspection Personnel, Property Owners and Utilities Companies** - The contractor coordinates/cooperates with CEI personnel responsible for administration of the contract requirements and inspection of the work. The contractor coordinates/cooperates well with property owners, utilities companies, and adjacent projects throughout the contract. The contractor responds to third party damages in a timely manner.

10 The contractor was cooperative and communicated well with the CEI, utility companies, and property owners, with very little direction from the Engineer. The contractor always gave advance notices to the CEI and utility companies (when work was in the vicinity of a utility), of work activities that required inspection. The contractor worked with the property owners to eliminate access problems for businesses and private property. No deficiency letter in the files by the CEI noting contractor's failure to cooperate/coordinate with the CEI, utility companies, and property owners. Contractor identified conflicts in advance, to allow timely resolution.

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1**. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

Attachment A -Employment & Materials Preference for Appalachian Development Highway System .....omitted.